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MOBILE HOME USURY PREEMPTIONS

HEARING

BEFORE THE

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
AND CONSUMER AFFAIRS

OF THE

COMMITTEE ON BANKING,
HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

LEGISLATIVE PROPOSALS TO MODIFY THE FEDERAL MOBILE HOME USURY PREEMPTION CONTAINED IN THE DEPOSITORY INSTITUTIONS DEREGULATION AND MONETARY CONTROL ACT OF 1980

NOVEMBER 6, 1985

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MOBILE HOME USURY PREEMPTIONS

WEDNESDAY, NOVEMBER 6, 1985

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS,
Washington, DC.

The subcommittee met at 9:30 a.m., in room SD-538, Dirksen Senate Office Building, Senator Slade Gorton (chairman of the subcommittee) presiding.

Present: Senators Gorton, Hecht, D'Amato, Cranston, and Dodd.

OPENING STATEMENT OF SENATOR GORTON

Senator GORTON. The purpose of this hearing is to take testimony on legislative proposals to modify the Federal mobile home usury preemption contained in the Depository Institutions Deregulation and Monetary Control Act of 1980. There is no bill pending, although draft legislation has circulated among the interested parties, and I understand that all of the witnesses received proposed legislative language with their invitations. I will include a copy of this proposed language in the hearing record today immediately following the opening statements.

The most controversial component of the proposal at hand is, clearly and frankly, a request to Congress for relief from a statute which now exists, and under which there are lawsuits pending. Obviously, this is the sort of situation which raises grave questions. It is incumbent upon those requesting the relief to establish clearly that it is justified by considerations either of fairness, of substantial congressional inadvertence, or of an overriding public interest. It is also incumbent upon them to provide adequate assurances that the relief they seek will not damage other parties' legitimate interests. If these conditions can be met, however, then I think this committee will be willing to consider the proposal.

The issue of retroactive relief for lenders is not the only question addressed by the proposed legislation, although it is the most controversial one. But I hope that the witnesses today will also comment on the desirability of the purely prospective elements of the proposal, and I know that the related issue of usury preemption for VA and FHA loans is also something which we will address.

I thank the witnesses for appearing before us today. We have made an effort to keep this hearing succinct by asking the lenders, the borrowers, and consumer groups each to present a single witness. We also will accept written testimony. I note that Messrs. Sawilowsky and Long have submitted a statement on behalf of borrowers, and it will be made a part of the hearing record at an appropriate point.

Finally, we have asked all the witnesses to appear in a single panel. I think this will help the committee get to the bottom of some of the issues and I appreciate the witnesses' willingness to be flexible about this arrangement. I would also appreciate it if witnesses would try to keep their oral presentations to 10 minutes, as all of the written submissions will be made part of the record in full.

With that, Senator Hecht.

Senator HECHT. Mr. Chairman, I commend you on holding these hearings. They have a lot of ramifications for my State of Nevada. I apologize that I have three committee hearings at this moment so I have to leave you, but I will be looking over the testimony.

Senator GORTON. Thank you.

Senator D'Amato.

Senator D'AMATO. Mr. Chairman, I also join Senator Hecht in commending you for calling this hearing and I have a statement that I'd ask be included in the record as if read in its entirety.

Senator GORTON. Without objection, it will be included in the record, as will statements of any other members of the committee who wish to have them so included.

[Senator D'Amato's opening statement, SLC draft No. 089910.415, and the statements of Messrs. Sawilowsky and Long follow:]

STATEMENT OF SENATOR ALFONSE M. D'AMATO

Senator D'AMATO. The focus of today's hearing is the usury preemption contained in section 501 of the Depository Institutions and Monetary Control Act. Section 501 preempts State usury ceilings for the financing of mobile homes if the terms and conditions relating to the mobile home loan comply with the consumer protection provisions specified in regulations prescribed by the Federal Home Loan Bank Board.

One of the terms and conditions of the preemption provided by the statute and regulations was that mobile home owners be provided with a 30-day notice of their right to cure a default before the institution of foreclosure proceedings. Recent court decisions reflect a difference in the interpretation of a creditor's obligation to a mobile home buyer under the notice requirements. The Eleventh Circuit Court of Appeals addressed this issue but its opinions have not entirely resolved the vagaries of the notice requirement. To resolve the uncertainties created by the decisions of the Eleventh Circuit which may effect subsequent judicial interpretations of the act, creditors that may be subject to millions of dollars in punitive damages for violating State usury laws have advocated a legislation solution.

A legislative proposal on this subject has been provided to the committee. While I have reviewed the proposal, I have not determined to endorse it without further study. It is not my intention to enact a legislative remedy that will be inconsistent with the original intent of title V of the Depository Institutions and Monetary Control Act. A legislative solution is not necessarily compelled to prevent creditors from incurring losses due to their failure to comply with the conditions under which the State usury laws were preempted. A failure to provide adequate notice denies consumers the protections originally intended by the act. The act is consumer protection legislation and amendments to it should not deny the protections originally intended by permitting creditors to circumvent the statute's preemption provisions.

I also recognize that legislation may be required to clarify the notice requirements the act imposes on creditors. I want to be assured that any amendments to existing law are necessary to ensure that State usury laws do not operate to restrict the availability of credit to those individuals that wish to purchase manufactured homes. If uncertainties have been created regarding the statute's meaning by recent legal interpretations of the statute, then these uncertainties must be resolved by legislation or new regulations so that consumers will not be denied credit to finance manufactured housing due to a legal technicality.

These are the issues that we must address at this morning's hearing. I look forward to the testimony of our witnesses. Their testimony should prove valuable in assisting our determination of whether a further legislative response is required and, if so, what the appropriate legislative response should entail.

Sec. 502. (a) Section 501(c) of the Depository Institutions Deregulation and Monetary Control Act of 1980 is amended to read as follows:

''(c)(1) The provisions of subsection (a)(1) shall not apply to a loan, mortgage, credit sale, or advance which is secured by a first lien on a residential manufactured home unless the contract or other document executed by the parties specifies that the provisions of this section are applicable. The terms and conditions relating to such loan, mortgage, credit sale, or advance shall comply with consumer protection provisions specified in regulations prescribed by the Federal Home Loan Bank Board. Such regulations shall--

''(A) include consumer protection provisions with respect to balloon payments, prepayment penalties, late charges, and deferral fees;

''(B) require a 30-day notice prior to instituting any action leading to repossession or foreclosure (except in the case of abandonment or other extreme circumstances);

''(C) require that upon prepayment in full, the debtor shall be entitled to a refund of the unearned portion of the precomputed finance charge in an amount not less than the amount which would be calculated by the actuarial method, except that the debtor shall not be entitled to a refund which is less than $1; and

''(D) include such other provisions as the Federal Home Loan Bank Board may prescribe after a finding that additional protections are required.

''(2) Any loan, mortgage, credit sale, or advance secured by a first lien on a residential manufactured home which is not subject to paragraph (1) shall be subject to the provisions of State law regarding consumer protection.

''(3) The Board shall publish model disclosure forms and clauses for common transactions to facilitate compliance with the regulations issued under paragraph (1) and to assist all parties in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the transaction. Nothing in this subsection may be construed to require the use of any model form or clause prescribed by the Board under this paragraph. A creditor shall be deemed to be in compliance with the regulations issued under paragraph (1) if the creditor (A) uses any appropriate model form or clause as published by the Board, or (B) uses any such model form or clause and changes it by deleting information which is not required by this section or rearranging the format, if in making the deletion or rearranging the format, the creditor does not affect the substance, clarity, or meaningful sequence of the information contained on the form. Model disclosure forms and clauses shall be adopted by the Board after notice in the Federal Register and an opportunity for comment in accordance with section 553 of title 5, United States Code.''; and

(b) Section 501 of such Act is amended by adding at the end thereof the following:

''(h) Except as otherwise provided in this section, any creditor who fails to comply with any requirement imposed under subsection (c)(1) with respect to any borrower is liable to such borrower in an amount equal to the sum of--

''(1) any actual damage sustained by the borrower as a result of the failure;

''(2)(A) in the case of an individual action twice the amount of any finance charge in connection with the transaction, except that the liability under this subparagraph shall not be less than $100 nor greater than $1,000; or

''(B) in the case of a class action, such amount as the court may allow, except that as to each member of the class no minimum recovery shall be applicable, and the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same creditor shall not be more than the lesser of $500,000 or 1 per centum of the the net worth of the creditor; and

''(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

In determining the amount of award in any class action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance, the resources of the creditor, the number of borrowers adversely affected, and the extent to which the creditor's failure of compliance was intentional.

''(i)(1) A creditor has no liability under subsection (h) for any failure to comply with any requirement imposed under subsection (c)(1) which occurs after the effective date of this subsection, if within sixty days after discovering the failure and prior to the institution of an action under this section or the receipt of written notice of the error from the consumer, the creditor notifies the borrower affected of the failure and makes whatever adjustments are necessary to assure that the borrower will be afforded the protections contained in the regulations issued under subsection (c)(1).

''(2) A creditor has no liability for a failure to comply with any regulation issued under subsection (c) which occurred after March 31, 1980, but prior to the effective date of paragraph (1) if--

''(A) there has been substantial compliance with the regulations issued under subsection (c); and

''(B) prior to the effective date of this paragraph, or within 60 days after discovering the failure or within 60 days after the effective date of this subsection, the creditor has notified or notifies the borrower affected of the failure and makes whatever adjustments are necessary to assure that the borrower will be afforded the protections contained in the regulations issued under subsection (c).

The preceding sentence does not apply to an action for actual damages incurred by a borrower as a result of a creditor's failure to notify the borrower of the borrower's right to cure prior to foreclosure or to a final judgment entered prior to the effective date of this subsection.

''(j) A creditor may not be held liable in any action brought under subsection (h) for a failure to comply with any requirement imposed under subsection (c)(1) if the creditor shows by a preponderance of evidence that the failure was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such failure. Examples of a bona fide error include, but are not limited to, clerical, calculation, computer malfunction and programming, and printing errors, except that an error of legal judgment with respect to either party's obligations under this section is not a bona fide error.

"(k) An action under subsection (h) may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation. This subsection does not bar a borrower from asserting a failure to comply with any requirement imposed under subsection (c)(1) in an action to collect the debt which was brought more than one year from the date of the occurrence of the violation as a matter of defense by recoupment or setoff in such action, except as otherwise provided by State law.

"(l) No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board or in conformity with any interpretation or approval by an official or employee duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

"(m) The provisions of this section (other than subsection (c)(2)) relating to a loan, mortgage credit sale, or advance secured by a residential manufactured home shall be deemed to apply to a loan, mortgage, credit sale or advance which is secured by a residential manufactured home and which is insured or guaranteed after the effective date of this subsection pursuant to title I of the National Housing Act or chapter 37 of title 38, United States Code.''.

(c) The amendments made by subsections (a) and (b) shall take effect upon the expiration of 180 days after the date of enactment of this Act, except that--

(1) the Federal Home Loan Bank Board shall publish for comment, revise if appropriate, and publish in final form, the model forms and clauses referred to in section 501(c)(3) of the Depository Institutions Deregulation and Monetary Control Act of 1980, as amended by subsection (a), not later than such effective date; and

(2) Section 501(1)(2) of such Act, as amended by subsection (b), shall take effect on the date of enactment of this Act.

(d) The amendments made by subsections (a) and (b) shall not apply to a loan, mortgage, credit sale, or advance subject to the laws of a State which, at the time such transaction was made, had acted under the provisions of subsection 501(b)(2) of the Depository Institutions Deregulation and Monetary Control Act of 1980 to make the provisions of subsection 501(a)(1) of such Act inapplicable to such transaction.

IN THE UNITED STATES SENATE

BANKING, HOUSING AND URBAN AFFAIRS COMMITTEE

FINANCIAL INSTITUTIONS & CONSUMER AFFAIRS SUBCOMMITTEE

HONORABLE SLADE GORTON, CHAIRMAN

November 6, 1985

IN RE:	Mobile Home Financing Legislation S.L.C. Draft No. 089910.415	)))))	TESTIMONY ON BEHALF OF MOBILE HOME PURCHASERS OPPOSING THE PROPOSED LEGISLATION

PRESENTED BY:

JAY M. SAWILOWSKY
902 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30901

JOHN B. LONG
NIXON, YOW, WALLER & CAPERS
1500 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30901

Attorneys for Arthur Quiller and Lillie Mae Quiller,
and Others Similarly Situated

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This written testimony sets forth the opposition of Arthur Quiller, Lillie Mae Quiller, and all other persons similarly situated to the proposed legislation. In this testimony the act, which is proposed to be amended, will be referred to as DIDMCA.

I am Jay M. Sawilowsky, a lawyer from Augusta, Georgia. John B. Long and I represent the plaintiffs Arthur Quiller, Lillie Mae Quiller, and all other persons similarly situated in the case of Quiller v. Barclays American/Credit, Inc. The 11th Court of Appeals ruled in favor of the plaintiffs, and Barclays American/Credit, Inc., has filed its petition for certiorari with the United States Supreme Court. The United States Supreme Court has not yet handed down any order granting or denying the petition.

THE PROBLEM AS SEEN FROM THE VIEWPOINT OF THE SIX FINANCE COMPANIES IS THAT THEIR CONTRACTS VIOLATE DIDMCA AND ARE ILLEGAL UNDER STATE LAW.

To our knowledge no bank or savings and loan association used a contract which does not comply with the requirements of DIDMCA and Section 590.4. of the Regulations.

To our knowledge the only finance companies whose contracts violate DIDMCA and Section 590.4. are: Citicorp Homeowners, Inc./Citicorp Acceptance Co., Inc.; Fort Wayne

Mortgage Company; Southern Guaranty Corporation; Barclays American/Financial, Inc.; First Carolina Financial Company and General Electric Credit Corp.

To our knowledge, those same six finance companies are the only lenders whose conduct violated DIDMCA.

This is not a Truth In Lending case. The issue is not disclosure. The issue is whether in fact the borrowers received the consumer protections mandated by Congress.

When Congress passed DIDMCA in 1980, it did not void any state laws limiting finance charges. DIDMCA provided that a lender could preempt state law, limiting finance charges, by providing that the borrower would have certain consumer protection which Congress mandated, in the Act, to be included among the regulations published by Federal Home Loan Bank Board. That Congress was serious in requiring the consumer protection is shown by House Conference Reprot Number 96-842 (1980 U.S. Code Congressional and Administrative News, page 309) which stated:

> "Manufactured home financing is covered by the mortgage usury preemption as long as such financing complies with the consumer protection provisions specified in regulations of the FHLBB. The conferees intend that in developing these regulations

> the Bank Board should look for guidance to regulations, handbooks and circulars of the FHA and VA regarding mobile home lending, the provisions of the standard conventional mortgage forms of FHLMC and FNMA, and the provisions of the Uniform Consumer Credit Code. The conferees wish to emphasize that consumer protection provisions regarding manufactured home financing adopted in regulations of the Bank Board shall not preempt any state law which provides stronger protection to the consumer." (emphasis added)

Twice, the Federal Home Loan Bank Board, in its comments regarding the regulations it was adopting pursuant to the Act, warned the lenders that the sale or loan documents had to comply with the consumer protection regulations or else the transactions would be subject to attack under state usury laws. May 12, 1980, Federal Register 45, Page 31122; June 30, 1980, Federal Register 45, Page 43681. Finally, in order to make it absolutely clear, in the preamble to the final amendments to the regulations, the Federal Home Loan Bank Board stated that those regulations only applied when a creditor covered by the act chooses to charge an interest rate which exceeds the state usury limit on mobile home loans. June 30, 1980, 45 Federal Register 43681, 43682.

The contract of Barclays American/Credit, Inc., with Mr. and Mrs. Quiller did not grant Mr. and Mrs. Quiller the consumer protections mandated by Congress. It did charge a finance charge substantially in excess of that permitted by Georgia law. The Eleventh Circuit Court of Appeals held in QUILLER V. BARCLAYS AMERICAN/CREDIT, INC., 727 F.2d 1067, 1072 (1984) that the contract not only failed to provide the consumer protections mandated by Congress but specifically authorized Barclays American to commit acts which violate DIDMCA; further, it held that the provisions of the contract gave the consumer "an affirmative misrepresentation as to his statutory guarantees." On rehearing en banc the Eleventh Circuit agreed with the panel. 764 F.2d 1400.

The Eleventh Circuit held that as the Barclays American contract violated DIDMCA, it could not claim the protection of that act and was subject to Georgia's law limiting finance charges. Therefore, it was subject to whatever statutory rights are provided by Georgia law for illegal finance charges. Barclays American has appealed this decision to the United States Supreme Court which is considering the same.

If the United States Supreme Court does not grant the appeal of Barclays American/Credit, Inc., then the trial court will determine what action to take for the benefit of the class because of that creditor's violation of Georgia. law. Obviously any lender whose contract violates the DIDMCA and in addition proposes a finance charge in excess of a state law limit, could expect the same treatment.

The problem is that generally when a finance company imposes a finance charge in excess of that permitted by state law, by law it cannot collect it. Any affected lender could face the possibility of being unable to collect a substantial amount of finance charges in states in which its contracts violated state law and DIDMCA.

THE SOLUTION PROPOSED BY THE SIX LENDERS IS TO DEPRIVE BORROWERS OF THEIR RIGHTS UNDER STATE LAW.

DIDMCA does not grant any rights or causes of action to a borrower. The borrower has only rights and causes of actions under state law in the event state law is not preempted.

There are now eight class action lawsuits pending against the six specific lenders in Georgia and North Carolina. In four of them, courts have held that the specific contracts there involved violated both DIDMCA and the applicable state law. In a fifth case, the Eleventh Circuit held, in GRANT V.

GENERAL ELECTRIC CREDIT CORPORATION, 764 F.2d 1404 (1985), that the specific contract there involved did not violate DIDMCA and, therefore, could claim its benefits. That decision is on appeal to the United States Supreme Court. There has been no decision entered in the other cases.

The propsed legislation is obviously intended by the six lenders to deprive the courts (including the United States Supreme Court) of jurisdiction in pending cases. Reference to its provisions show the lenders intend to use it, in a retroactive fashion, to defeat all claims now pending or which could be brought to enforce the rights of borrowers under state law.

The proposed legislation would be used by the lenders to defeat the claims of borrowers, under state law, who:

(a) have had their mobile homes repossessed or foreclosed; or

(b) have lost their mobile homes through fire, flood, etc., and whose debt has been paid by insurance;

(c) have been the victims of conduct prohibited by DIDMCA.

The lenders ask Congress to rescue them from the consequences of their violation of both DIDMCA and state law.

We submit that only an extreme case, involving extraordinary circumstances, could justify depriving the courts of jurisdiction for the benefit of only a few finance companies. All are supposed to be equal before the law.

THESE SIX LENDERS CANNOT SAY THEY TRIED IN GOOD FAITH TO COMPLY WITH AN AMBIGUOUS STATUTE AND REGULATION BECAUSE MOST OTHER LENDERS COMPLIED EASILY AND WITH NO DIFFICULTY.

Reference to DIDMCA Section 501(c) and Regulation 590.4 show that neither is ambiguous. (Appendix 1 contains copies of both.)

It was and is easy to comply with the statute and regulation. We know that, without difficulty, the following finance companies did so: CIT Financial Services, Green Tree Acceptance, Inc., and Sunamerica. Two used printed forms which are available for those who don't want to go to the expense of hiring a lawyer to prepare a contract. Copies of those contracts are set out in Appendix 2. The Sunamerica contract was held by the Georgia Court of Appeals to comply with DIDMCA. VICKERY V. MOBILE HOME INDUSTRIES, Inc., 171 Ga. App. 566, 320 S.E.2d 633 (1984).

Reference to the Appendices 1 and 2 show the ease of drafting a contract which meets the regulations of DIDMCA and Reg 590.4. One need only place DIDMCA Sec. 501(c) and Reg 590.4 before you and do the following:

(1) Provide for payoff with no prepayment penalty by the actuarial method.

(2) Provide that the borrower shall have a 30 day notice prior to accelerating the debt or instituting any action leading to repossession or foreclosure, except in the case of abandonment or other extreme circumstances, which notice need not be given more than twice in any one year period.

(3) Check the regulations about balloon payments, prepayment penalties, late charges, and deferral fees.

A first year law student could do it. A job printer in Marietta Georgia did do it (Green Tree Contract). There is no need to seek the expertise of the Federal Home Loan Bank Board or a large law firm.

As stated, to our knowledge all banks and savings and loan associations used contracts which comply with the requirements of DIDMCA and Section 590.4 of the Regulations.

IT IS ONLY FAIR TO REQUIRE THE SIX FINANCE COMPANIES TO PROVE, AT THE LEAST BY PROPONDERANCE OF CREDITABLE EVIDENCE, THAT THEY BOTH NEED AND DESERVE RESCUE.

Nationwide, tens of thousands of families who have purchased mobile homes are involved. Over the life of those contracts the finance charges imposed, in access of state law limits, will amount to millions of dollars. If the borrowers did not get the consumer protection mandated by Congress DIDMCA, then these families are having their pockets picked each month.

These six lenders ask Congress for special privileges. They ask for immunity from the Courts for their violations of DIDMCA and state law.

The proponents of this legislation should show, by creditable evidence, the following:

a. Exactly which lenders are at risk. As of this date, we know of only six, including Citicorp, GECC, and Barclays/American.

b. The number and percentage of contracts which are contrary to DIDMCA, including the basis of all assumptions.

c. The dollar amount of the finance charges at risk and how that was determined, including the basis of all assumptions.

d. Exactly what is the market at risk and how is that determined, including the basis of all assumptions.

e. Exactly which lenders are at risk because of this conduct.

If the proponents failed to prove the above, then the proposed legislation is special interest legislation for their benefit only. As the lenders offer their evidence every assertion should be challenged. Every assertion should be carefully examined.

Congress has a history of requiring those who ask for rescue to prove they need and deserve it. That requirement should be followed here.

ANY LOSS WHICH A FINANCE COMPANY WOULD INCUR, BECAUSE IT VIOLATED THE LAW, WOULD BE DESERVED AND REASONABLE.

From the information presently available, it is impossible to know the exposure of the six finance companies nationwide or even in Georgia. The scare figures advanced by the lenders and their supporters make three false assumptions:

(a) That each contract since 1980 violates the act. We know that is not true. Examples of contracts which do not violate the act are set forth in Appendix 2. Also, no bank or savings and loan association is known to have a contract contrary to DIDMCA.

(b) That every state in the Union has penalties for violation of state finance charge limits. We know that is false.

(c) That the amount of the "exposure" is accurately known. All the variables that would go into the calculations are unknown or, at best, guesses and assumptions from persons with a financial interest. What are the exact number of illegal contracts of each lender? What is the amount of the finance charge in each contract? What is the interest rate and term of each contract? What is the factual basis for each average figure given by the lenders? Are the assumptions used by the lenders in fact true? The answers are unknown.

We do know that the ability to charge and collect significant sums above the legal limit creates a strong temptation to violate the state law.

If a finance company violates the Georgia law limiting finance charges, the result (per O.C.G.A. § 10-1-38) is:

(a) The finance company loses the entire finance charge but the borrower still owes the balance of the principal after credit in full for all payments. Arithmetic will then tell which owes the other how much.

(b) In case of a "willful" violation, the finance company owes the borrower an amount equal to double the finance charge and any delinquency charge and any attorney's fees and court costs charged and paid with respect to the transaction but the borrower still owes the finance company an amount equal to the principal (here assumed to be the cash price) and the cost of any insurance bought by the finance company for the borrower. Again, arithmetic will tell which owes the other how much.

The Georgia appellate courts have held that the borrower has "the heavy burden" of proving a willful violation of the statute. The borrower must prove more than just the finance charge exceeded the state law limit; generally, negligence, even gross negligence, does not prove a willful violation. BOZEMAN V. TIFTON FEDERAL SAVINGS & LOAN ASSOCIATION, 172 Ga.App. 652, 324 S.E.2d 199 (1984). As far as Georgia law is concerned, the finance companies exaggerate their exposure.

All should agree that violations of a law should carry a penalty. If Mr. and Mrs. Quiller violate a law, they must pay the penalty provided by law. No one will claim they committed only a "technical" error in ambiguous circumstances.

Finance companies should be held to the same standard. Are they entitled to special consideration? No, if we agree all are equal under the law.

THERE IS A NEED FOR THE CONSUMER PROTECTIONS MANDATED BY CONGRESS IN 1980 BECAUSE, AS A CLASS, MOBILE HOME BUYERS ARE MORE EASILY VICTIMIZED.

In 1980 Congress knew of abuses and the need for consumer protection.

Congress knew the history of abuse associated with mobile home lending. In large part, these abuses have resulted from the fact that mobile homes are usually financed under motor vehicle and retail installment sale laws, which allow lending practices that are not appropriate for loans as large as that required in a mobile home sale. As personalty, mobile homes have been also subject to summary repossessions in the event of default.

FHLBB General Counsel Op. No. 1981-2, Fed. Banking L.Rep (CCH) 83,002 (July 28, 1981). Moreover, as a group, mobile home credit buyers are more vulnerable than the average homeowner because they are poorer and less well educated. U.S. Dept. of Commerce, Bureau of the Census, Annual Housing Survey, Part A, (1974).

Mobile home credit buying is dominated by poorer families. In 1980, 400,000 families were mobile homeowners with incomes below the poverty line. U.S. Dept. of Commerce, Bureau of the Census, U.S. METROPOLITAN HOUSING CHARACTERISTICS, Table A-8 (1983). Fully 35% of mobile homeowners have incomes under $10,000.00. Ibid. About 25% of mobile homeowners are senior citizens, and your married couples comprise another 25%, FTC, Staff Report on Mobile Home Sales & Service at 37-39 (1979). More than for homeowners overall, 21% of mobile homeowners have less than a sixth grade education, and over held the mobile homes are located outside of metropolitan areas, id., where there is frequently less access to consumer education and legal assistance.

When high finance charge rates are used to finance mobile home purchases (as when state limits are preempted) the debt is harder to manage and families are more likely to become overextended. The frequency of delinquency increases, and with it the occasion for collection abuses. When mobile homeowners are late in making a payment, it is often for reasons beyond their control. Like other consumer borrowers, lapses of income from unemployment, uninsured or underinsured illness or injury, divorce, termination or reduction in pensions or other benefits, and unmanageable expenses like heating bills cannot be avoided, as the FTC found. FTC, Credit Practices Rule Statement of Basis and Purpose and Regulatory Analysis, 49 Fed. Reg 7740, 7744, note 27 (1984).

Because of these disadvantages, mobile homeowners are disproportionately victims: they are easier to overawe less able to understand or defend their rights and easier to intimidate. As the Presiding Officer in the FTC hearings on mobile homes summarized it:

> It is is also clear that consumers purchasing mobile homes rely entirely on the expertise of both the dealer and the manufacturer to handle the sometimes complicated deals of the entire transaction.

FTC, Report of the Presiding Officer on Proposed Trade Regulations Rule: Mobile Home Sales & Services, at 31 (1979). They were also found to be less able to afford lawyers to discern their rights or to seek legal advice. Id. at 31, 38.

Congress undoubtedly had these factors in mind when it passes the Preemption Act and required certain consumer benefits to be in the contract in order to preclude overreaching by the creditor if higher rates were to be charged. H. Conf. Rep. No. 96-842, 96th Cong., 2d Sess. 79, reprinted in 1980 U.S. Code Cong. & Ad News 298, 309. These benefits are especially critical when a person's home is at risk.

Why would a finance company violate the act and regulation? It is of advantage to them to be in position to pressure the borrowers. Among the materials submitted by the attorneys for Mr. and Mrs. Grant and Mr. and Mrs. Moyer is a copy of the District Court's remarks as it had granted injunctive relief against Citicorp. As Judge Bowen pointed out, somewhere there might be a lawyer or a judge who is aware of the federal preemption statue but most are not. It gives the lender an enormous advantage, particularly in dealing with the kind of people who buy mobile homes in rural areas where most are located.

THE FAIR DEBT COLLECTION PRACTICES ACT DOES NOT PROTECT BORROWERS FROM THE ABUSES PROHIBITED BY CONGRESS IN DIDMCA.

It has been suggested that the Fair Debt Collection Practices Act, 15 USC Section 1692, protects borrowers from the abuses prohibited by DIDMCA. It does not.

By definition the act would not apply to an officer or employee of a finance company collecting debts for his employer. 15 USC Section 1692(a)(6). KIZER VS. FINANCE AMERICAN CREDIT CORPORATION ET AL 454 F. Supp. 937 (N.D. Miss. 1978).

The specific abusive collection tactics forbidden by the Fair Debt Collection Practices Act are set out in 15 USC Sections 1692 b-j. The collection practices there prohibited do not include accelerating the debt without notice, repossession without notice or bringing a foreclosure action without notice. Threatening an immediate repossession is not forbidden so long as the finance company had a present legal right to possession to the collateral and the threat was made between eight o'clock in the morning and nine o'clock at night using ordinary business courtesy without profane language and the threat of violence.

It is important to note that taking or threatening to take nonjudicial action to repossess does not violate the Fair Debt Collection Practices Act so long as the creditor has a present legal right to repossession of the property claimed as collateral through an enforceable security interest. 15 USC

Section 1692(f)(6). Under the contract with Mr. and Mrs. Quiller and Georgia Law Barclays/American had the right to demand repossession of the Quiller mobile home without giving a 30-day notice or any notice.

There is no right to notice to cure default or to notice prior to repossession unless those rights are stated in the contract. The general rule of American law is that the right to repossess is absolute once default has occurred and the secured party may immediately repossess without notice--UNLESS OTHERWISE PROVIDED IN THE CONTRACT. If it is not in the contract, there is no right to notice prior to repossession. 75 A.L.R. 3rd 1061, et seq. (1977); 29 A.L.R. Fed. 418, et seq. (1977); Uniform Laws Annotated, Uniform Commercial Code, Master Edition, 9-503, Note 8; 69 Am Jur 2d, Secured Transactions, Section 598.

Georgia follows that general rule. FORD MOTOR CREDIT COMPANY V. HUNT, 241 Ga. 342, 245, S.E. 2d 295 (1978). That case held there was no cause of action for wrongful repossession without notice because there was no right to notice in the contract. The Quiller contract contains language almost identical to that in FORD MOTOR CREDIT COMPANY V. HUNT, supra.

THE HARM TO THE BORROWERS IS THAT THEY MUST PAY FINANCE CHARGES WHICH ARE ILLEGAL UNDER STATE LAW.

The harm to a borrower is demonstrated by the example in the case of Mr. and Mrs. Quiller. They bought the mobile home for $20,000.00, paid $4,000.00 down and financed $16,000.00. The total finance charge was $31,417.40 making the total time price $47,417.40. At that time Georgia law limited the finance charge on such a loan to $24,000.00. Thus, Barclays/American charged Mr. and Mrs. Quiller $7,417.40 in excess of that permitted by Georgia law.

The Barclays/American contract violated provisions of DIDMCA. Therefore, Mr. and Mrs. Quiller under Georgia law were illegally charged $7,417.40. The wisdom of the Georgia law is not an issue.

The case does not involve any hypertechnical violation. The contract clearly and obviously violated DIDMCA and regulation 590.4 and Georgia law. Further, Barclays/American did not give Mr. and Mrs. Quiller the 30 day notice required by this statute, either in or out of court. In its amended answer and counterclaim, Barclays/American pointed out that it had given a prior 20 day notice to Mr. and Mrs. Quiller, which also warned them that no further notice was required. The lawsuit was brought by Mr. and Mrs. Quiller in response to a demand for repossession without a 30 day notice. In a counterclaim, Barclays/American asked the court that, without any 30 day notice for Mr. and Mrs. Quiller to cure any default, it have possession of the trailer and judgment for all amounts owed under the contract plus attorney fees. (The amended answer and counterclaim are set forth in Appendix 3).

In its amicus curiae brief filed in the 11th Circuit Court of Appeals (on rehearing), dated July 20, 1984, the Federal Home Loan Bank Board - even though it supported the lenders -- took a strong position with regard to the 30 day notice and the defective notice given by Barclays/American. In reference to the 30 day notice, required by Section 590.4(h), on page 12 of its brief the Federal Home Loan Bank Board stated:

"The section does, however, require that such notice of default and right to cure be given before a creditor may accelerate, repossess or foreclose (except in the circumstances previously discussed). The regulation prescribes the act of giving notice and the form the notice must take. This is a significant right of debtors that must be observed for the federal usury preemption to continue to apply ... If, in fact, a court finds that the prescribed notice under Section 590.4(h) was not provided to the debtor, then the creditor loses its federal preemption of the state usury law. The debtor then has available the full panoply of rights and remedies under the applicable state usury statute. 5/

5/ Allegations are made that Barclays has given a defective Section 590.4(h) notice. If true, Barclays would lose its federal preemption. The court must decide whether under the Federal Rules of Civil Procedure such alleged facts should be considered on a review of a motion to dismiss."

Barclays/American sent a defective Section 590.4(h) notice. Therefore, as stated above, Federal Home Loan Bank Board which supports the position of Mr. and Mrs. Quiller that Barclays/American has lost its federal preemption. For that reason alone, it would be inappropriate for Congress to pass legislation which would rescue Barclays/American, or any other finance company, which has lost its federal preemption because of its conduct.

It is particularly inappropriate for Barclays/American to ask Congress to rescue it from the consequences from its violation of Georgia law. In addition to all other facts, Barclays/American contended, in the trial court, that DIDMCA was unconstitutional. (Please refer to its amended answer, 10th Defense, in Appendix 3).

As a practical matter, mobile home buyers are damaged more than paying illegal finance charges. Due to the high interest rate, from the very beginning, the mobile home is worth less than the balance of the debt. This lack of equity can be easily demonstrated in every contract by every affected lender. Until late in the contract, the buyer cannot sell the mobile home except by a conveyance to a buyer who does nothing more than assume the payments. It can be said with confidence that the affected lenders will not prove otherwise.

Some, opposing the legislation, take the position that the amounts involved for each borrower is not significant to that borrower. That is not true.

Mr. and Mrs. Quiller were illegally charged $7,417.40. Was that illegal charge significant to them?

The record in the trial court, transmitted to the 11th Circuit, showed that both worked for minimum wages. Mr. Quiller was a dishwasher at a cafeteria. Mrs. Quiller was a cleaning lady at an office building and later a cook in a small restaurant. The $7,417.40 is more than either earned gross over the course of a year if they worked 40 hours a week. At times, during Mr. Quiller's illness, it was more than their combined gross yearly earnings.

On a monthly basis, the $7,417.40 illegal charge amounts to $41.20. In this low-income family, in the best of circumstances, that meant no telephone. With Mr. Quiller's illness, it meant doing without some of the things which middle and upper income people consider necessities. Mr. and Mrs. Quiller were being made to pay money which under state law was illegal for Barclays/American to require them to pay.

THE PROPOSED AMENDMENT IS UNCONSTITUTIONAL AS TO SOME CONTRACTS BECAUSE IT WOULD BE AN ATTEMPT TO BE A RETROACTIVE ABOLITION OF CONTRACT CLAIMS.

Even though the United States Constitute does not prohibit the United States Congress from abrogating contractual rights of individuals or corporations, in so abrogating contract rights, they can only be taken as a result of "due process" of law. In one of the mobile home cases which has precipitated this litigation, the case of Southern Guaranty Corp. v. Doyle, Case No. 85-8187, pending before the Eleventh Circuit Court of Appeals, the contract specifically provides, in part:

> . . . No FINANCE CHARGE or interest shall ever be charged, retained or collected by you in excess of that permitted under the application provisions of Georgia law.

That is an express contractual right which Congress should not seek to abrogate without just compensation. Likewise, in the case of Quiller, et al v. Barclays/American Credit, Inc., the Quiller contract specifically provides, in pertinent part:

> . . . If any part of this contract is invalid, unenforceable or inconsistent with the applicable laws or regulations of the State of Seller's address herein, such part shall be deemed amended, modified or deleted to conform thereto.

That is an express contractual right.

In the case of United States v. Security Industrial Bank, 459 U.S. 70, 74 L.Ed.2d 235, 103 S.Ct. 407 (1982), the United States Supreme Court held that the lien avoidance provision of the Bankruptcy Reform Act of 1978, 11 U.S.C. §522(f)(2), could not retroactively be applied to liens established prior to the date of the enactment of the Act. That provision of the Bankruptcy Code allowed an individual debtor, in claiming a homestead exemption in a bankruptcy proceeding, to void liens on certain household goods and other properties.

During the Great Depression, Congress sought to provide certain benefits to farms in order to allow them to regain their farms from mortgage holders. In Louisville Joint Stock Land Bank v. Radford, 295 U.S. 554, 79 L.Ed. 1593 (1935), the court held that the Act was void, holding:

> . . . For the Fifth Amendment commands that, however great the Nation's need, private property shall not be thus taken even for a wholly public use without just compensation. If the public interest requires, and permits, the taking of property of individual mortgagees in order to relieve the necessities of individual mortgagors, resort must be had to proceedings by eminent domain; so that, through taxation, the burden of the relief afforded in the public interest may be borne by the public. Id., 601.

The proposed amendment is contrary to the mandates of the 5th Amendment to the United States Constitution because some lenders seek, without adequate compensation, to deprive certain mobile home purchasers of contract claims they have as a result of finance companies violating the provisions of state law.

THE OPINION TO BE ADVANCED BY THE FEDERAL HOME LOAN BANK BOARD IN SUPPORT OF THE LENDER SHOULD BE RECEIVED WITH SKEPTICISM BECAUSE IT WILL NOT PRESENT FACTS SHOWING DANGER TO A MARKET.

The Federal Home Loan Bank Board may be expected to completely support the lenders. It may be expected to insist that the 11th Circuit Court of Appeals should have agreed with it in its interpretation of the Barclays/American contract.

The Federal Home Loan Bank Board can be expected to express great concern about the disruption of a financial market, potential huge losses to lenders who are insured by FDIC and FLSIC, etc. One may further expect Federal Home Loan Bank Board to offer no concrete evidence to support its opinion as to risk, particularly in view of its position, taken before the 11th Circuit, that whether or not a lender is within or without the scope of DIDMCA depends upon the lender's conduct. It may be expected that Federal Home Loan Bank Board would not known of one bank or savings and loan association whose contract violates DIDMCA and regulation or whose conduct did so.

THE FEES OF THE LAWYERS IN THESE CLASS ACTIONS SHOULD NOT BE A CONSIDERATION BY CONGRESS BECAUSE THEY ARE CLOSELY SCRUTINIZED AND SUPERVISED BY THE COURTS.

The proponents of the legislation contend that these class actions were merely vehicles whereby the lawyers are trying to make money out of a hypertechnical violation. The reality is not that presented by the lenders.

First, the evidence shows that the problem is not technical language. It is in fact that possession by borrowers of consumer protections mandated by congress.

Secondly, lawyers who represent plaintiffs in class actions are by no means assured of big fees or any fees. Their fees, if any, are based upon:

(a) First, winning and obtaining a substantial benefit for the class. If that isn't done, they don't get paid anything.

(b) Then, if they have obtained a substantial benefit for the class, they make application to the court. The court sets the fees after receiving evidence about the work, the result obtained, the benefit to the class and other other relevant considerations. After receiving all evidence from all interest parties (including the lenders who have the opportunity to try to get revenge) in open court, the court then sets the fees per guidelines established by law.

By contrast, the fees of the lawyers opposing the class actions, and in supporting the proposed legislation, are not subject to either requirement. They certainly are not subject to public scrutiny in or out of court. The class actions are not for the benefit of the lawyer. By law, the people who get the benefit and relief are the mobile home purchasers.

THE SIX LENDERS HAVE OTHER OPTIONS THAN TO REQUEST CONGRESS TO BAIL THEM OUT, INCLUDING SETTLEMENT.

Settlement of the cases is an option available to the affected lenders. So far, Citicorp has shown no interest whatsoever. So far GECC has shown no interest whatsoever. Neither responded to overtures from plaintiffs' counsel. So far Barclays/American has shown some slight interest; however the last letter to counsel for Barclays/American, making an offer in compromise, last April went unanswered.

THIS BAD SPECIAL INTEREST LEGISLATION SHOULD BE REJECTED BECAUSE IT IS CONTRARY TO THE INTEREST OF MANY THOUSANDS OF LOW AND MIDDLE INCOME FAMILIES ACROSS THE NATION AND WILL ONLY HELP A FEW LENDERS WHO DON'T NEED OR DESERVE IT.

In 1980, no consumer appeared before Congress and demanded the right to pay 18%-20% interest. DIDMCA is legislation urged by the lenders. They got the legislation together with a few simple rules. A few lenders broke the rules and now ask Congress to help them.

But does that help the mobile home buyers?

If you don't look out for the consuming public, who will?

~~(b) (1) Except as provided in paragraphs (2) and (3), the provisions of subsection (a)(1) shall apply to any loan, mortgage, credit sale, or advance made in any State on or after April 1, 1980.~~

~~(2) Except as provided in paragraph (3), the provisions of subsection (a)(1) shall not apply to any loan, mortgage, credit sale, or advance made in any State after the date (on or after April 1, 1980, and before April 1, 1983) on which such State adopts a law or certifies that the voters of such State have voted in favor of any provision, constitutional or otherwise, which states explicitly and by its terms that such State does not want the provisions of subsection (a)(1) to apply with respect to loans, mortgages, credit sales, and advances made in such State.~~

~~(3) In any case in which a State takes an action described in paragraph (2), the provisions of subsection (a)(1) shall continue to apply to—~~

~~(A) any loan, mortgage, credit sale, or advance which is made after the date such action was taken pursuant to a commitment therefor which was entered during the period beginning on April 1, 1980, and ending on the date on which such States takes such action; and~~

~~(B) any loan, mortgage, or advance which is a rollover of a loan, mortgage, or advance, as described in regulations of the Federal Home Loan Bank Board, which was made or committed to be made during the period beginning on April 1, 1980, and ending on the date on which such State takes any action described in paragraph (2).~~

~~(4) At any time after the date of enactment of this Act [Mar. 31, 1980], any State may adopt a provision of law placing limitations on discount points or such other charges on any loan, mortgage, credit sale, or advance described in subsection (a)(1).~~

(c) The provisions of subsection (a)(1) shall not apply to a loan, mortgage, credit sale, or advance which is secured by a first lien on a residential manufactured home unless the terms and conditions relating to such loan, mortgage, credit sale, or advance comply with consumer protection provisions specified in regulations prescribed by the Federal Home Loan Bank Board. Such regulations shall—

(1) include consumer protection provisions with respect to balloon payments, prepayment penalties, late charges and deferred fees;

(2) require a 30-day notice prior to instituting any action leading to repossession or foreclosure (except in the case of abandonment or other extreme circumstances);

(3) require that upon prepayment in full, the debtor shall be entitled to a refund of the unearned portion of the precomputed finance charge in an amount not less than the amount which would be calculated by the actuarial method, except that the debtor shall not be entitled to a refund which is less than $1; and

(4) include such other provisions as the Federal Home Loan Bank Board may prescribe after a finding that additional protections are required.

~~(d) The provisions of subsection (c) shall not apply to a loan, mortgage, credit sale, or advance secured by a first lien on a residential manufactured home until regulations required to be issued pursuant to paragraphs (1), (2), and (3) of subsection (c) take effect, except that the provisions of subsection (c) shall apply in the case of such a loan, mortgage, credit sale, or advance made prior to the date on which such regulations take effect if the loan, mortgage, credit sale, or advance includes a precomputed finance charge and does not provide that, upon prepayment in full, the refund of the unearned portion of the precomputed finance charge is in an amount not less the amount which would be calculated by the actuarial method, except that the debtor shall not be entitled to a refund which is~~

12 C.F.R. § 590.4 provides that:

§ 590.4 Consumer protection rules for federally-related loans, mortgages, credit sales and advances secured by first liens on residential mobile homes.

(a) *Definitions*. As used in this section:

(1) *Prepayment*. A 'prepayment' occurs upon—

(i) Refinancing or consolidation of the indebtedness;

(ii) Actual prepayment of the indebtedness by the debtor, whether voluntarily or following acceleration of the payment obligation by the creditor; or

(iii)The entry of a judgment for the indebtedness in favor of the creditor.

(2) *Actuarial method*. The term 'actuarial method' means the method of allocating payments made on a debt between the outstanding balance of the obligation and the finance charge pursuant to which a payment is applied first to the accumulated finance charge and any remainder is subtracted from, or any deficiency is added to, the outstanding balance of the obligation.

(3) *Precomputed Finance Charge*. The term 'precomputed finance charge' means interest or a time/price differential as computed by the add-on or discount method. Precomputed finance charges do not include loan fees, points, finder's fees, or similar charges.

(4) *Creditor*. The term 'creditor' means any entity covered by this Part, including those which regularly extend or arrange for the extension of credit and assignees that are creditors under section 501(a)(1)(C)(v) of the Depository Institutions Deregulation and Monetary Control Act of 1980.

(b) *General*.

(1) The provisions of the Constitution or the laws of any State expressly limiting the rate or amount of interest, discount points, finance charges, or other charges which may be charged, taken, received, or reserved shall not apply to any loan, mortgage, credit sale, or advance which is secured by a first lien on a residential mobile home if a creditor covered by this Part complies with the consumer protection regulations of this section.

(2) *Relation to State Law.*

(i) In making loans or credit sales subject to this section, creditors shall comply with state and Federal law in accordance with the following:

(A) *State law regulating matters not covered by this section.* When state law regulating matters not covered by this section is otherwise applicable to a loan or credit sale subject to this section, creditors shall comply with such state law provisions.

(B) *State law regulating matters covered by this section.* Creditors need comply only with the provisions of this section, unless the Board determines that an otherwise applicable state law regulating matters covered by this section provides greater protection to consumers. Such determinations shall be published in the FEDERAL REGISTER and shall operate prospectively.

(ii) Any interested party may petition the Board for a determination that state law requirements are more protective of consumers that the provisions of this section. Petitions shall be sent to: Secretary to the Board, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552, and shall include:

(A) A copy of the state law to be considered;

(B) Copies of any relevant judicial, regulatory, or administrative interpretations of the state law; and

(C) An opinion or memorandum from the state Attorney General or other appropriate state official having primary enforcement responsibilities for the subject state law provisions, indicating how the state law to be considered offers greater protection to consumers that the Board's regulation.

(c) *Refund of precomputed finance charge.* In the event the entire indebtedness is prepaid, the unearned portion of the precomputed finance charge shall be refunded to the debtor. This refund shall be in an amount not less than the amount which would be refunded if the unearned precomputed finance charge were calculated in accordance with the actuarial method, except that the debtor shall not be entitled to a refund which is less than one dollar. The unearned portion of the precomputed finance charge is, at the option of the creditor, either:

(1) That portion of the precomputed finance charge which is allocable to all unexpired payment periods as originally scheduled, or if deferred, as deferred. A payment period shall be deemed unexpired if prepayment is made within 15 days after the payment period's scheduled due date. The unearned precomputed finance charge is the total of that which would have been earned for each such period had the loan not been precomputed, by applying to unpaid balances of principal, according to the actuarial method, an annual percentage rate based on those charges which are considered precomputed finance charges in this section, assuming that all payments were made as originally scheduled, or as deferred, if deferred. The creditor, at its option, may round this annual percentage rate to the nearest one-quarter of one percent; or

(2) The total precomputed finance charge less the earned precomputed finance charge. The earned precomputed finance charge shall be determined by applying an annual percentage rate based on the total precomputed finance charge (as that term is defined in this section),

under the actuarial method, to the unpaid balances for the actual time those balances were unpaid up to the date of prepayment. If a late charge or deferral fee has been collected, it shall be treated as a payment.

(d) *Prepayment penalties.* A debtor may prepay in full or in part the unpaid balance of the loan at any time without penalty. The right to prepay shall be disclosed in the loan contract in type larger than that used for the body of the document.

(e) *Balloon payments—*

(1) *Federal associations.* Federal association creditors may enter into agreements with debtors which provide for non-amortized and partially-amortized loans on residential manufactured homes, and such loans shall be governed by the provisions of this section and § 545.33(f) of this chapter.

(2) *Other creditors.* All other creditors may enter into agreements with debtors which provide for non-amortized and partially-amortized loans on residential manufactured homes to the extent authorized by applicable Federal or state law or regulation.

(f) *Late charges.*

(1) No late charge may be assessed, imposed, or collected unless provided for by written contract between the creditor and debtor.

(2) To the extent that applicable State law does not provide for a longer period of time, no late charge may be collected on an installment which is paid in full on or before the 15th day after its scheduled or deferred due date even though an earlier maturing installment or a late charge on an earlier installment may not have been paid in full. For purposes of assessing late charges, payments received are deemed to be applied first to current installments.

(3) A late charge may be imposed only once on an installment; however, no such charge may be collected for a late installment which has been deferred.

(4) To the extent that applicable State law does not provide for a lower charge or longer grace period, a late charge on any installment not paid in full on or before the 15th day after its scheduled or deferred due date may not exceed the lesser of $5.00 or five percent of the unpaid amount of the installment.

(5) If, at any time after imposition of a late charge, the lender provides the borrower with written notice regarding amounts claimed to be due but unpaid, the notice shall separately state the total of all late charges claimed.

(6) Interest after the final scheduled maturity date may not exceed the maximum rate otherwise allowable under State law for such contracts, and if such interest is charged, no separate late charge may be made on the final scheduled installment.

(g) *Deferral fees.*

(1) With respect to mobile home credit transactions containing precomputed finance charges, agreements providing for deferral of all or part of one or more installments shall be in writing, signed by the parties, and

(i) Provide, to the extent that applicable state law does not provide for a lower charge, for a charge not exceeding one percent of each installment or part thereof for each month from the date when such installment was due to the date when it is agreed to become payable and proportionately for a part of each month, counting each day as 1/30th of a month;

(ii) Incorporate by reference the transaction to which the deferral applied;

(iii)Disclose each installment or part thereof in the amount to be deferred, the date or dates originally payable, and the date or dates agreed to become payable; and

(iv) Set forth the fact of the deferral charge, the dollar amount of the charge for each installment to be deferred, and the total dollar amount to be paid by the debtor for the privilege of deferring payment.

(2) No term of a writing executed by the debtor shall constitute authority for a creditor unilaterally to grant a deferral with respect to which a charge is to be imposed or collected.

(3) The deferral period is that period of time in which no payment is required or made by reason of the deferral.

(4) Payments received with respect to deferred installments shall be deemed to be applied first to deferred installments.

(5) A charge may not be collected for the deferral of an installment or any part thereof if, with respect to that installment, a refinancing or consolidation agreement is concluded by the parties, or a late charge has been imposed or collected, unless such late charge is refunded to the borrower or credited to the deferral charge.

(h) *Notice before repossession, foreclosure, or acceleration.*

(1) Except in the case of abandonment or other extreme circumstances, no action to repossess or foreclose, or to accelerate payment of the entire outsanding balance of the obligation, may be taken against the debtor until 30 days after the creditor sends the debtor a notice of default in the form set forth in paragraph (h)(2) of this section. Such notice shall be sent by registered or certified mail with return receipt requested. In the case of default on payments, the sum stated in the notice may only include payments in default and applicable late or deferral charges. If the debtor cures the default within 30 days of the postmark of the notice and subsequently defaults a second time, the creditor shall again give notice as de-

scribed above. The debtor is not entitled to notice of default more than twice in any one-year period.

(2) The notice in the following form shall state the nature of the default, the action the debtor must take to cure the default, the creditor's intended actions upon failure of the debtor to cure the default, and the debtor's right to redeem under state law.

TO: ______________________________

DATE: ______________________, 19____

NOTICE OF DEFAULT AND RIGHT TO CURE DEFAULT

Name, address, and telephone number of creditor ____

____

Account number, if any ______________

Brief identification of credit transaction __________

____

You are now in default on this credit transaction. You have a right to correct this default within 30 days from the postmarked date of this notice.

If you correct the default, you may continue with the contract as though you did not default. You default consists of: ______________ Describe default alleged ______________

Cure of default: Within 30 days from the postmarked date of this notice, you may cure your default by (describe the acts necessary for cure, including, if applicable, the amount of payment required, including itemized delinquency or deferral charges).

____

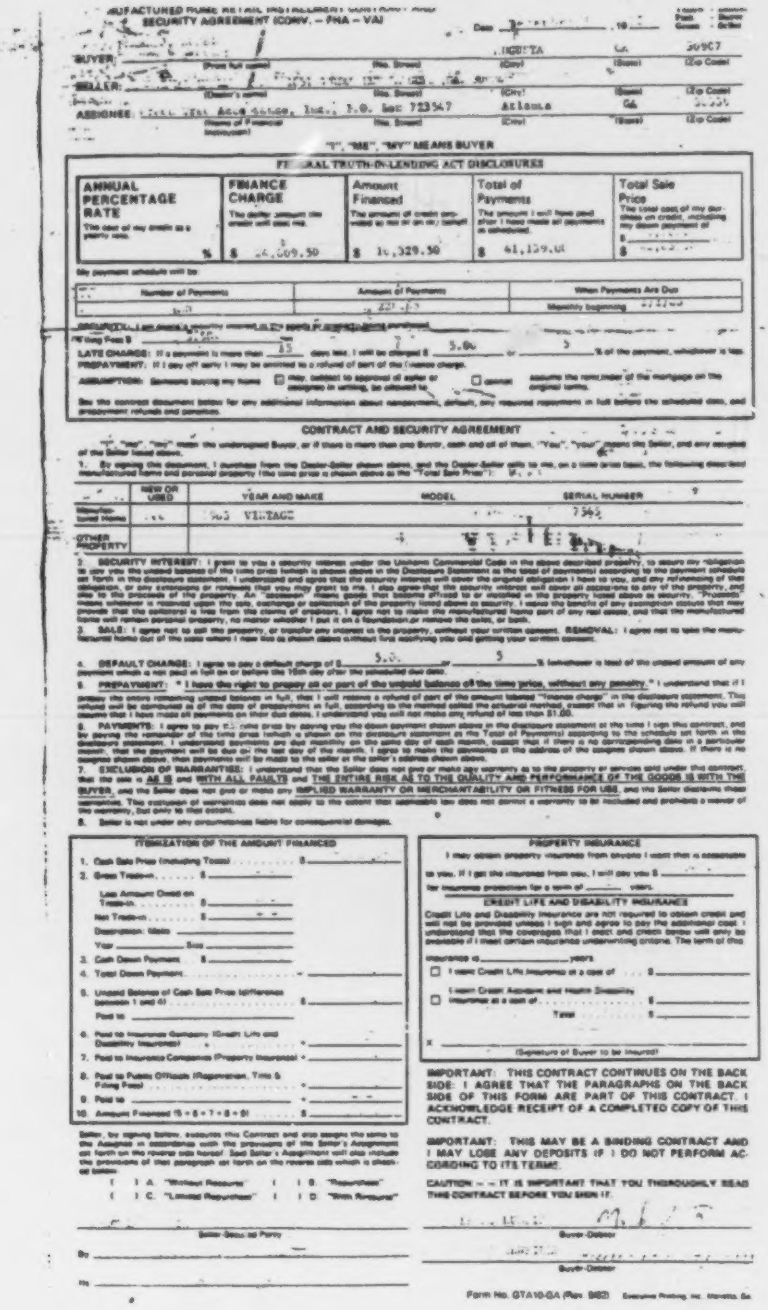
____

Creditor's rights: If you do not correct your default in the time allowed, we may exercise our rights against you under the law by (describe action creditor intends to take).

____

If you have any questions, write (the creditor) __________ at the above address or call (creditor's designated employee) __________ at (telephone number) __________ between the hours of ______ and ______ on (state days of week) __________.

If this default was caused by your failure to make a payment or payments, and you want to pay by mail, please send a check or money order; do not send cash.



SECURITY AGREEMENT (CONV. – FHA – VA)

Date ________, 19__

BUYER: (Print full name) (No. Street) AUGUSTA (City) GA (State) 30907 (Zip Code)

SELLER: (Dealer's name) (No. Street) (City) (State) (Zip Code)

ASSIGNEE: P.O. Box 723547 (No. Street) Atlanta (City) GA (State) (Zip Code)

"I", "ME", "MY" MEANS BUYER

FEDERAL TRUTH-IN-LENDING ACT DISCLOSURES

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price
%	$ 24,609.50	$ 16,329.50	$ 41,139.00	$

Number of Payments	Amount of Payments	When Payments Are Due
[illegible]	[illegible]	Monthly beginning [illegible]

LATE CHARGE: 15 5.00 5

PREPAYMENT:

ASSUMPTION: ☒ ☐

CONTRACT AND SECURITY AGREEMENT

	NEW OR USED	YEAR AND MAKE	MODEL	SERIAL NUMBER
Manufactured Home	[illegible]	1983 VINTAGE	[illegible]	7565
OTHER PROPERTY				

2. SECURITY INTEREST:

3. SALE: REMOVAL:

4. DEFAULT CHARGE: 5.00 5

5. PREPAYMENT: "I have the right to prepay all or part of the unpaid balance of the time price, without any penalty."

6. PAYMENTS:

7. EXCLUSION OF WARRANTIES: AS IS and WITH ALL FAULTS and THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE GOODS IS WITH THE BUYER, IMPLIED WARRANTY OR MERCHANTABILITY OR FITNESS FOR USE

8. Seller is not under any circumstances liable for consequential damages.

ITEMIZATION OF THE AMOUNT FINANCED

1. Cash Sale Price (including Taxes) $
2. Gross Trade-in $
   Less Amount Owed on Trade-in $
   Net Trade-in $
   Description: Make
   Year Size
3. Cash Down Payment $
4. Total Down Payment
5. Unpaid Balance of Cash Sale Price (difference between 1 and 4) $
   Paid to
6. Paid to Insurance Company (Credit Life and Disability Insurance)
7. Paid to Insurance Companies (Property Insurance)
8. Paid to Public Officials (Registration, Title & Filing Fees)
9. Paid to
10. Amount Financed (5 + 6 + 7 + 8 + 9) $

PROPERTY INSURANCE

CREDIT LIFE AND DISABILITY INSURANCE

☐ I want Credit Life Insurance at a cost of $

☐ I want Credit Accident and Health Disability Insurance at a cost of $

Total $

X (Signature of Buyer to be Insured)

IMPORTANT: THIS CONTRACT CONTINUES ON THE BACK SIDE: I AGREE THAT THE PARAGRAPHS ON THE BACK SIDE OF THIS FORM ARE PART OF THIS CONTRACT. I ACKNOWLEDGE RECEIPT OF A COMPLETED COPY OF THIS CONTRACT.

IMPORTANT: THIS MAY BE A BINDING CONTRACT AND I MAY LOSE ANY DEPOSITS IF I DO NOT PERFORM ACCORDING TO ITS TERMS.

CAUTION — IT IS IMPORTANT THAT YOU THOROUGHLY READ THIS CONTRACT BEFORE YOU SIGN IT.

( ) A. "Without Recourse" ( ) B. "Repurchase"
( ) C. "Limited Repurchase" ( ) D. "With Recourse"

Seller-Secured Party

By

Its

Buyer-Debtor

Buyer-Debtor

Form No. GTA10-GA (Rev. 9/82) Executive Printing, Inc. Marietta, Ga.

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

9. DEFAULT: I agree that if I default under this agreement, that you will have the right, upon 30 days prior written notice, to declare all remaining amounts due under this agreement immediately due and payable to you. You will give me a credit of part of the amount labeled "Finance charge" in the Truth in Lending disclosure, which will be figured when any of the following things happen: (a) the collateral is sold by you, or (b) you sue me to collect the amount due under the agreement. The refund will be figured using the method called the [illegible] method, except that you will assume that all payments made were made on the due date. I understand that I will be in default under this Agreement if any of the following happens: (a) if any payment required under the payment schedule is not paid in full when due; (b) if any statement I have made to you on any credit application or any supporting financial statement is false or is breached in any material way; (c) if I fail to observe or perform any of the provisions or agreements contained in this security agreement; (d) if I should die; (e) if I, or any endorser or guarantor of the obligations under this agreement, [illegible] a petition for relief under the Bankruptcy Code, or if any proceeding is instituted against me under the Bankruptcy Code, or if a receiver is appointed [illegible] if any judgment is obtained or placed against me or by any person; (f) if you for reasonable cause believe the property described above [illegible] damage or loss; (g) if for other good and reasonable cause you believe that payment of the amount due under this agreement is impaired; (h) if I [illegible] payments of rent, taxes, or other charges that I incur in connection with the lot or the site upon which the manufactured home is placed. The default [illegible] under 9(f) and 9(g) do not apply if this Contract is guaranteed by the Veteran's Administration.

10. ATTORNEYS' FEES: I agree that if you refer this agreement [illegible] who is not a salaried employee of yours, that I will have to pay attorneys' fees of 15% of the amount due under the agreement, plus any court [illegible] you have to pay. If this contract is guaranteed by the Veterans Administration, then those attorneys' fees will not be more than $350.00 or 10% of the amount due under the contract, whichever is less. I also agree to be responsible for payment of the following items: (a) any expenses you incur which is reasonably necessary to protect the manufactured home; (b) expenses that you incur that are reasonably necessary to collect amounts due under this contract, or to repossess or sell the manufactured home, including a reasonable sales commission to the dealer or sales broker for resale of the manufactured home.

11. PROPERTY LEFT IN THE MANUFACTURED HOME: If there is any property [illegible] in the manufactured home when you take possession of it, you will hold that property for me for at least [illegible] days after you take possession. [illegible] in the manufactured home when you took possession.

12. REMEDIES: In addition to the rights discussed in this agreement, I understand that you have all the rights of a secured party under Article 9 of the Uniform Commercial Code.

13. I understand that in case any one or more of the provisions of this agreement are held to be invalid or illegal or unenforceable, that that will not affect the other provisions of this agreement.

14. INSURANCE: I agree to keep all the property [illegible] and in good repair and insured against any loss or damage, in a company that is satisfactory to you and in amount that is satisfactory to you. I agree to have you named on the policy as the loss-payee. I agree that the insurance company may make any payments due under the policy directly to you, and I direct the insurance company to do so. I understand that you will return to me any payments made to you under the policy for loss or damage, to reimburse me for the costs of fixing the property or replacing it, so long as your interest is adequately protected, and so long as this agreement is not in default, and so long as I provide to you, prior to your return of the insurance payments, satisfactory proof that the repairs or replacements have been made. For this purpose I appoint you as my attorney-in-fact, with full power of substitution, to receive moneys and execute proof of claims and to endorse drafts and other instruments payable to me under the policy. I also authorize you to adjust and compromise any claim and to execute releases. I understand that nothing in this paragraph obligates you to procure any insurance, but I agree that if I fail to keep insurance in force as agreed under this paragraph, that you can buy the insurance and charge me for it, with interest, and I understand that any payment by you will be secured by the security agreement granted under this agreement.

15. I understand that the provisions of this contract can only be waived, modified, or amended, and the security interest that I grant you under this agreement may be waived, only by a writing signed by you. I understand that all your rights and remedies are cumulative and may be exercised individually or concurrently, at your option. I understand that this contract and the provisions of this contract are binding upon the heirs, executors, administrators and successors of mine.

GUARANTY: I am signing this document to guarantee to you, jointly and severally, prompt payment when due of every installment payment required under this Agreement, and the payment, on demand, of the full amount owing under this Agreement upon any default under the Agreement, and I understand that you do not have to pursue any other remedy that you may have before you demand payment from me. I also waive notice of acceptance of this guaranty and of default under the agreement and I consent to your compromising or releasing, by operation of law or otherwise, any rights that you may have and I further agree that you may grant extensions of time of payment to anyone who has signed this agreement as the Buyer, and to allow an assumption of this Agreement without affecting this guaranty.

____________________ ____________________
(Guarantor) (Address)

____________________ ____________________
(Guarantor) (Address)

ASSIGNMENT

The Seller named on the face of the front side of the Retail Installment Contract (the "Contract") hereby sells assigns and transfers to the Financial Institution named on the face of the Contract its entire right, title and interest in and to the Contract and the property described therein (the "Property"), and the Seller's rights under any guaranty relating thereto and authorizes the Financial Institution, in its name or the Seller's name, to do every act or thing necessary to collect and discharge the obligations arising out of or incidental to the Contract. In order to induce the Financial Institution to accept assignment of the Contract, the Seller warrants that: (i) the Contract and guaranty, if any, are genuine, legally valid and enforceable, and subject to no defense, counterclaim or set-off, and a copy of the Contract was given to the Buyer; (ii) all disclosures in the Contract comply with the requirements of the Federal Truth in Lending Act and Regulation Z, and the Seller made such disclosures and the Contract was complete in all respects prior to the execution thereof by the Buyer named therein; (iii) all statements of fact made in the Contract and all statements made by or on behalf of the Buyer in any forms relating to the Contract are true to the best of Seller's knowledge and belief, and the Seller has no knowledge of any fact that would impair the validity or value of the Contract; (iv) Seller has fully complied with the Equal Credit Opportunity Act and Regulation B in connection with the sale evidenced by the Contract; (v) unless otherwise indicated in the Contract, the Buyer is not a minor and has capacity to contract; (vi) Seller has complete and unencumbered title to the Property and has applied for a certificate of title covering the Property, which will indicate the Assignee as secured party. Notwithstanding anything herein to the contrary, if there is a breach of any of the foregoing warranties, without regard to the Seller's knowledge with respect thereto or the Financial Institution's reliance thereon, or if the Buyer exercises any right of rescission accorded Buyer by law, or if Buyer asserts against Financial Institution any claim or defense which he could assert against Seller, then, in any such event, the Seller hereby agrees unconditionally to purchase the Contract from the Financial Institution, upon demand, for the full amount then unpaid, whether the Contract shall then be, or not be, in default, and to indemnify, defend and hold the Financial Institution harmless from any loss, liability, damage or expense claimed or incurred by reason of any such claim or defense. In addition, this assignment includes the provisions of the paragraph below, which is checked by the Seller, provided, that if none of the paragraphs below has been checked by the Seller, this assignment shall be considered to have been checked "With Recourse". The liability of the Seller shall not be affected by any extension, renewal or other change in the manner, place or terms of payment thereof, or the release, settlement or compromise of or with any party liable for payment thereof, or the release or non-perfection of any security thereunder. The Financial Institution shall not be bound to exhaust its recourse against the Buyer or any other person or any security the Financial Institution may at any time have before being entitled to payment by the Seller hereunder. The Seller waives notice of the acceptance of this assignment and notices of non-payment and non-performance of the Contract and any other notices required by law and waives all set-offs and counterclaims.

A. "Without Recourse". The assignment of the Contract is and shall be without recourse against the Seller except as provided in any dealer agreement between Seller and Financial Institution relating to the purchase of contracts.

B. "Repurchase". If the Financial Institution repossesses the manufactured home, the Seller will, upon demand, pay the Financial Institution the full amount remaining unpaid under the Contract, provided, that the manufactured home is offered to the Seller within 90 days after maturity of the earliest installment still in default.

C. "Limited Repurchase". If the Financial Institution repossesses the manufactured home, the Seller will, upon demand, pay the Financial Institution the full amount remaining unpaid under the Contract; provided, however, that the Seller shall not be required to repurchase a Contract if the repossession occurs after ____________ monthly payments required on the Contract have been paid by the Buyer.

D. "With Recourse". The Seller unconditionally guarantees payment of the full amount remaining unpaid under the Contract, and agrees to purchase the Contract from the Financial Institution, upon demand, for the full amount then unpaid, whenever the Contract shall be in default.

CIT Financial Services **Security Agreement**

Month Day Year
September 26 83

Customer's Name [redacted]
Seller Name [redacted]

Address(es) [redacted]
Address [redacted]

[redacted] Month and Year of Customer's Birth
[redacted]

The words "I", "me" and "my" refer to the Customer and Co-Customer signing this contract. The words "you" and "your" refer to the Seller (or Holder if this contract is assigned).

I have today bought and received in satisfactory condition the mobile home described below including attachments, equipment, accessories and related services (referred to collectively in this contract as "commodity") under the terms and provisions on the face and back of this contract.

Commodity and Equipment (Describe)

New or Used	Year and Make	Series, Make or Trade Name (Also No. if applicable)	Description	Identification No. (Serial or Motor No.)	State Registration No.
New	1983 Liberty	Leader	Cream/beige 2Bdrm.FKIC 60x14 W/hitch	[redacted]	

☐ AirCond./Serial No. N/A
☒ Refrigerator/Serial No. [illegible]
☐ Awnings
☒ Skirting
☐ Accessory Shed
☐ Freezer/Serial No.
☐ Washer/Serial No. N/A
☐ Furniture
☒ Other (Describe) Unfurnished
☒ Range Serial No. [illegible]
☐ Dryer Serial No. N/A

Will be kept at [redacted] County [redacted] State Florida

Description of Real Estate if taken as security (including street address)
City
County State

ANNUAL PERCENTAGE RATE 16.50% = The cost of my credit as a yearly rate
FINANCE CHARGE $17,065.93 = The dollar amount the credit will cost me
Amount Financed $13,106.39 = The amount of credit provided to me or on my behalf
Total of Payments $30,172.32 = The amount I will have paid after I have made all payments as scheduled
Total Sale Price $32,391.93 = The total cost of my purchase on credit, including my downpayment of $ 2,219.61

My payment schedule will be	Number of Payments	Amount of Payments	When Payments Are Due
	144	$ 209.53	Monthly beginning November 7, 1983

SECURITY – I am giving you a security interest in the goods or property being purchased, as further described in the contract.
☐ If this box is checked I am also giving you a mortgage or deed of trust in the real estate described in the contract.
LATE CHARGE – If a payment is more than 15 days late, I will pay you 5% of the late amount or $5, whichever is less.
PREPAYMENT – If I pay off early, I may be entitled to a refund of part of the finance charge.
ASSUMPTION – Someone buying my commodity may, subject to conditions, be allowed to assume the remainder of the contract on the original terms.
See the contract document for any additional information about nonpayment, default, any required repayment in full before the scheduled date and prepayment refunds and penalties.
e means estimate

State Disclosures and Itemization of Amount Financed

1 Cash Price $ 14,650.00
2 Computation of Total Downpayment
a Cash Downpayment $ N/A
b Trade-in (Yr. Make, Model) 79 Villager 14233
Gross $6,000.00
Less Owing $3,780.39
Net Trade-in $ 2,219.61
Total Downpayment (a + b) $ 2,219.61
3 Unpaid Balance of Cash Price (1 minus 2) $12,430.39
4 Insurance Charges
a Insurance on the Commodity $ 191.00
b Personal Liability Insurance $ N/A
c Credit Life Insurance $ N/A
(Paid to the Insurance Company)
Total Insurance Charges (a + b + c) $ 191.00
5 Other Charges
a Official Fees (Specify) $ N/A
$ 15.80
b Taxes (not included in Cash Price) $ 432.50
c Licence Fees $ N/A
d Cert. of Title Fees $ 2.00
e Registration Fees $ 34.70
(Paid to Public Officials)
Total Other Charges (a + b + c + d + e) $ 485.00
6 Amount Financed (3 + 4 + 5) $13,106.39
7 Finance Charge (interest) $17,065.93
8 Total of Payments (6 + 7) $30,172.32
I will pay you the above Total Payments in accordance with the payment schedule set forth above.
9 Total Sale Price (1 + 4 + 5 + 7) $32,391.93

Date you start charging finance charge, if not the same as the date of this contract N/A 19__ (If a date is filled in, it means that I have not yet received the commodity, but expect to receive it by that date.)
N/A

DESIGNATION OF INSURED
If a charge for credit life insurance is included in this contract, I designate as the person to be covered the individual whose signature first appears. (If a corporation is designated, an officer must sign; if a partnership is designated, a partner must sign.) No credit life insurance will be obtained if the person designated is 70 years old or more.

In order to induce Connecticut General Life Insurance Company or any substituted insurer to accept this insurance, the Customer designated below as the person to be insured confirms that he or she is under 70 years of age. If the person is over 65 years of age, he or she will enter date of birth below and sign this statement.

N/A N/A
Date of Birth Signed

NOTICE:
ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

Accepted

Insurance Coverages
No Coverages Included Except as Shown Below and Under Item 4 at Left
☒ $ 100. Deductible Comprehensive
☐ $ ___ Deductible Collision
☒ Fire and Theft
☒ Combined Additional Coverage
☒ Personal Effects Protection
☒ Single Interest Property Insurance covering Holder's interest only, subject to policy terms
☒ Natural Disaster Protection
☒ Comprehensive Personal Liability Insurance
☒ Limit of Liability – Each Occurrence
☒ $25,000 ☒ $50,000
☒ $500. ea. person
250. ea. occurrence
☒ Other Insurance (Describe) Inflation Guard

For term of 12 months from the date hereof. Customer may choose the agent and insurer through or by which the insurance described above is to be placed.
Total Premium for insurance coverages described above if obtained from or through Seller $ 271.00

Credit Life Insurance Election
Credit Life Insurance is not required by Seller.
The undersigned (check one box):
☐ Request(s) Credit Life Insurance only, the cost of which is shown in item 4c at left for entire term of contract, unless a lesser term is set forth herein.
☒ Does not want any Credit Life Insurance.

9-26-83
Customer's Signature to above statement
9-26-83
Co-Customer's Signature to above statement
Also See Designation of Insured on the left

Unless Comprehensive Personal Liability Insurance Premium is Disclosed Above
INSURANCE COVERAGES ABOVE DO NOT INSURE AGAINST LIABILITY FOR BODILY INJURY OR PROPERTY DAMAGE CAUSED TO OTHERS.
If insurance on the commodity not included herein, I will furnish copy of policy with long form loss payable clause, purchased from

[redacted]
Agents Name and Address [redacted]
[redacted]
Name of Insurance Company

(contract continued on the other side)

NOTICE TO THE BUYER:
a. Do not sign this contract before you read it or if it contains any blank spaces. b. You are entitled to an exact copy of the contract you sign. Keep it to protect your legal rights.

I acknowledge receipt of a true copy of this contract which was completely filled in prior to my signing it.

Customer (Person insured under Credit Life Insurance, if applicable)

Co-Customer

Because the Seller has agreed to sell the commodity described above to the Customer, I agree to give the Seller a security interest in the commodity. I am not obligated to pay by signing below.

CIT
APP-2

Terms and Conditions

Default — If a payment is more than 15 days late, I will be charged a late charge equal to 5% of the unpaid amount of the payment or $5, whichever is less. If you accept late payments or partial payments, that does not mean you will accept other late or partial payments. I am in default if I do not make any of my scheduled payments, or if I do not comply with any other requirements of this contract, or if bankruptcy or insolvency proceedings are brought by or against me. If I default, you may send me a notice giving me 30 days after the notice is sent to eliminate the default, but this notice does not have to be sent if within the one-year period before the default occurred I previously defaulted and you sent me a notice on two separate occasions. If I do not eliminate the default in the manner stated in this notice, then at the expiration of the 30 day notice period, at your option (i) the full amount I owe, after deducting the charges which you have not yet earned (the charges which you have not yet earned will be computed according to applicable law but in any event will not be less than the refund that would be given if I prepaid this contract in full) will become due and payable, and (ii) you may repossess the commodity, and you can peaceably enter my premises to do so and/or you can foreclose on any real estate mortgage or deed of trust I have given you. If you are not required to send me a 30 day notice, then you can exercise these rights as soon as I am in default. If you have to sue me, I agree to pay your outside attorney's fees of not more than 15% of the amount that I owe you, plus court costs. You have all the rights of a secured party under the Uniform Commercial Code. If you sell my mobile home, you have a right to sell to a dealer. If you have to give me notice of sale after repossession, 5 days is sufficient. The proceeds of sale and/or foreclosure (minus attorney's fees, court costs and reasonable expenses incurred in realizing on your security interest) will be credited to my unpaid balance. If any money is left over after you have applied it to my obligation under this contract, it will be paid to me, but if any money is still owing, I agree to pay you the balance.

Rebate for Prepayment — At any time, I have the right without penalty to pay this contract in full or to pay more than my schedule requires. If I pay in full ahead of schedule, you will refund the unearned Finance Charge. The amount of the refund will be determined by applying the disclosed Annual Percentage Rate to the scheduled unpaid balances of the Amount Financed for the unexpired installment periods, as originally scheduled or as deferred. The Finance Charge for the payment period during which prepayment is made is earned by you if more than 15 days of it has elapsed. You will not pay me any refund of less than $1.

Security Interest – You will retain a security interest under the Uniform Commercial Code in the commodity and all equipment, tires, heaters, radios, television sets, furniture, appliances, accessories and parts sold under this contract, including proceeds and accessions, until I have paid the balance in full and completely satisfied all other requirements of this contract and any modifications to it. I assign to you any insurance proceeds relating to persons or property, including return or unearned premiums for application to the unpaid balance. I direct any insurer to pay you directly. In the event of default, you may cancel all insurance and credit any refund to the unpaid balance. I waive all marital rights, homestead exemption and all other exemptions relating to any property in which I have granted you a security interest.

If disclosed on the face of this contract, I have also given a mortgage or deed of trust in the real estate described on the face of this contract and its proceeds as security for this contract.

You agree to waive and disclaim any security interest in the real estate described on the face of this contract which may be created in your favor by operation of law in connection with this transaction including but not limited to materialman's liens, mechanic's liens, artisan's liens and vendor's liens as a result of goods and services provided in connection with this transaction.

Other Terms and Conditions — I had a choice of paying either the cash price or the total sale price and chose the latter. I agree to keep the commodity free from all liens, and I won't move it from my address unless you agree in writing. I won't sell or give the commodity away, or rent it out, or use it illegally. You are entitled to any proceeds from the sale of the commodity, but this right does not waive any rights you have in the commodity and does not permit me to sell or transfer the commodity in violation of this contract. The commodity will remain personal property and will not become part of my real estate. Any notices you send me are sufficient if sent to my address as shown on this contract.

As used in this contract, a consumer credit sale means a sale of goods, services, or both, to an individual, primarily for personal, family, or household purposes. If this sale is other than a consumer credit sale, I agree to settle all claims, set-offs and defenses against Seller directly with Seller, and not assert them against the holder of this contract.

If you assign this contract to someone else, I understand that you will not act for the other party to receive payments or for any other purposes. No agreement, representation or warranty is binding on you unless included in this contract. No change in this agreement will be binding if it isn't in writing and signed by you and me. All of your rights are cumulative. If anything in this contract is not valid or consistent with law or regulations, it can be considered modified or deleted so that it complies.

I understand that I am responsible for any damage to the commodity, and I agree to buy insurance for the term of this contract covering the commodity against all damage. In addition, if I have given you a mortgage or deed of trust in my real estate, I will buy insurance in a form and amount satisfactory to you covering the real estate against risk of loss or damage for the duration of this contract. The insurance I obtain, which must be satisfactory to you, will contain a loss payable clause naming you or anyone to whom you assign this contract. If I do not buy insurance, or if the insurance included in this contract is cancelled or cannot be obtained for any reason or if the insurance lapses during the term of the contract, I understand that you may, if you choose, obtain insurance protecting both or either of us, apply any premium refund to the cost of such insurance, and add the amount you pay less any premium refunds together with interest at the highest lawful contract rate, to the amount I owe under this contract.

If there is an insurance charge included in this contract, it may have to be adjusted upon issuance of the policy or certificate. If the insurance charge included in this contract exceeds the actual cost, I understand that I will receive an appropriate credit. If the actual cost exceeds the insurance charge included in the contract, I agree to pay you such excess either in one lump sum or in equal installments over the remaining term of the contract concurrent with remaining installments as you choose, together with interest at the highest lawful contract rate.

No warranties, expressed or implied, representations, promises or statements as to the condition, fitness or merchantability of the commodity have been made by you unless covered by a separate statement delivered to me. A statement as to year model is for identification only. No changes may be made in the requirements of this paragraph unless in writing and signed by you and me. If any part of this paragraph is not permitted by law, that part will be ineffective, but the remainder of the paragraph will remain in force.

Guaranty

The words "I" and "my" refer to all Guarantors signing this guaranty.
The words "you" and "your" refer to Holder of this contract.
The word "Customer" includes "Co-customer".

I guarantee payment to you of each installment when due under this contract and payment of the Unpaid Balance of Cash Price upon demand and all other obligations of Customer if Customer defaults, without first requiring that you proceed against Customer or that you perfect or ensure enforceability of the Customer's obligations or security. I represent to you that this contract is genuine, legally valid and enforceable and waive notice of its acceptance and any defaults thereunder. I agree that you may, without affecting my liability, compromise or release any rights against and grant deferments of payment to Customer. My signature on this Guaranty means that I am equally responsible with all other Guarantors signing this Guaranty for the performance of all of its terms. If I default under this Guaranty and you refer this Guaranty to an attorney for collection, I will pay your attorney's fees (15%) of the amount in default, if not prohibited by law), court costs and disbursements.

.... (Seal)

.... (Address)

.... (Seal)

.... (Address)

Form 4631
2-OO56-12
SC Fed. Preempt. - I.B.
9/81

Mobile Home
RETAIL INSTALLMENT CONTRACT AND DISCLOSURES REQUIRED BY THE FEDERAL TRUTH IN LENDING ACT

DEALER INSTRUCTIONS
(1) Customer must sign where X appears
(2) Dealer must sign where arrow appears
(3) White Copy — Dealer executes assignment and gives to assignee
(4) Green Copy — Give to Buyer
(5) Yellow Copy — Give to Co-Buyer
(6) Pink Copy — For Recording then give to assignee
(7) Goldenrod Copy — Dealer retain

ALFRED J. VICKER	2970 SKYVIEW DR., LOT 158	LITHIA SPRINGS	GA. 30[illegible]
BUYER(S)'S NAME	NUMBER AND STREET	CITY	STATE & ZIP
CO-BUYER(S)'S NAME	NUMBER AND STREET	CITY	STATE & ZIP
[illegible]	[illegible] W. [illegible] ST.,	DOUGLASVILLE	GA. [illegible]3
SELLER'S NAME	NUMBER AND STREET	CITY	STATE & ZIP

The undersigned Seller, (hereinafter sometimes called Secured Party) hereby sells, and the undersigned Buyer (meaning all of undersigned Buyers jointly and severally) hereby purchases, subject to the terms and conditions hereinafter set forth below and on the reverse hereof, the following described mobile home complete with furniture, appliances, attachments and equipment (including but not limited to those items specifically described below), all of which are hereinafter collectively called "Collateral", delivery and acceptance of which is in good order, hereby is acknowledged by Buyer.

Location of Collateral, if other than Buyer's above address: ATLANTA WEST MHP, LOT 158, 2970 SKYVIEW DR., LITHIA SPRINGS,GA

YEAR	N/U	MANUFACTURER'S NAME	MODEL NAME & MODEL NO.	MANUFACTURER'S SERIAL NO.	DESCRIPTION		
					LENGTH	WIDTH	COLOR
82	N	[illegible]		APL1AC1707-1-[illegible]	70	14	CREAM

ITEMS INCLUDED ☐ Air Conditioning Unit(s) ☒ Range ☒ Refrigerator ☐ Freezer ☐ Washer ☐ Dryer
☐ Furniture (as per Mfg. floor plan) ☐ Awning(s) ☐ Skirting ☐ Accessory Shed ☐ Other ____

INSURANCE AUTHORIZATION—CREDIT LIFE and/or CREDIT DISABILITY INSURANCE IS NOT REQUIRED TO OBTAIN THIS CREDIT. Either or both will be in an initial amount equal to Total of Payments (Item 7) and will be written for the contractual term of the credit.

Insurance will be obtained only for such eligible Buyer(s) who check coverage, sign and date below in the separate section, as follows:

I/WE DESIRE

☐ Credit Life Insurance on Insured-Buyer (1) — Cost $ 0
(Place cost in item 4(a) to right)

☐ Joint Credit Life on Insured-Buyers (1) and (2) — Cost $ 0
(Place cost in item 4(a) to right)

☐ Credit Disability Insurance on Insured-Buyer (1) — Cost $ 0
(Place cost in item 4(b) to right)

☒ I do not desire Credit Insurance.

[illegible]-82 ____ (Date)
____ (Signature of Insured — Buyer) (1)

____ (Date)
____ (Signature of Other Insured - Buyer - JCL Only) (2)

PROPERTY INSURANCE, if written in connection with this sale, may be obtained by purchaser through any person of his choice. If purchaser desires Property Insurance to be obtained through the creditor, the cost will be

$ ____ for ____ months of coverage.

(Place cost in item 4(c) to right.)

SECURITY INTEREST: Buyer grants to Secured Party (Seller) and its assigns a purchase money security interest under the South Carolina Uniform Commercial Code in the Collateral, accessions thereto and proceeds therefrom, until this Contract, including refinancing and renewals hereof, is paid in full.

☐ If checked, Buyer also gives Seller a Real Estate Mortgage on real estate located

at ____

____

as further security for this transaction.

This transaction is also secured by a waiver, to the extent allowed by law, of homestead and other exemptions.

PREPAYMENT: BUYER MAY REPAY HIS OBLIGATIONS UNDER THIS CONTRACT IN FULL AT ANY TIME PRIOR TO MATURITY. Accrued charges to date of prepayment must be paid at the time of prepayment.

The Seller may assign the contract to [illegible]

at [illegible]

____, who in the event of such assignment will be a SUBSEQUENT CREDITOR.

1. CASH PRICE (INCLUDES TAXES, DELIVERY AND INSTALLATION) $ 14,45[illegible]
2. DOWN PAYMENT
   Cash Down Payment $ 1500.00
   Trade-in (described) 0 $ 0
   TOTAL DOWN PAYMENT $ 1500.00
3. UNPAID BALANCE OF CASH PRICE (1 minus 2) $ 12,956.06
4. OTHER PERMITTED CHARGES
   (a) Credit Life Insurance $ 0
   (b) Credit Disability Insurance $ 0
   (c) Property Insurance $ 253.00
   (d) Official Fees
      (1) Filing $ [illegible].50
      (2) License $ 0
      (3) Title $ [illegible].00
      (4) ____ $ ____
      (5) ____ $ ____
   TOTAL OTHER CHARGES $ [illegible]
5. UNPAID BALANCE - AMOUNT FINANCED (sum of 3 & 4) $ [illegible]
6. *FINANCE CHARGE $ [illegible]
7. TOTAL OF PAYMENTS (total of 5 & 6) $ [illegible]
8. DEFERRED PAYMENT PRICE (total of 1, 4 & 6) $ [illegible]
9. ANNUAL PERCENTAGE RATE ____%
10. PAYMENT SCHEDULE
    [illegible] monthly payments due commencing [illegible]
    19____, and the same day of each month thereafter until fully paid.
    Each monthly payment shall be $ [illegible]
    except that if irregular, one payment shall be $ ____
11. DATE FINANCE CHARGE BEGINS TO ACCRUE - if different from Date of Contract: [illegible]

*Finance Charge is an estimate based on the assumption that all payments will be made exactly as scheduled.

Buyer(s) jointly and severally promise to pay to Seller or its assignee the Amount Financed (item 5 above) with Finance Charge from the later of the date hereof or the date given in item 11 above, at the Annual Percentage Rate stated in item 9 above until the Amount Financed is fully paid, together with any other sum Buyer(s) may become obligated to pay pursuant to the provisions hereof. Payments will be made according to the Payment Schedule (item 10) above. Seller shall apply payments received first to Finance Charge accrued to date of payment, and the remainder to the unpaid balance of Amount Financed.

The Buyer understands and agrees that the provisions on the reverse side hereof are hereby incorporated by reference and constitute a part of this Contract as if fully set forth at this point.

The Buyer hereby acknowledges that he has received from the Seller a true copy of this foregoing document with all blanks suitably filled, and that such a copy was delivered to him by the Seller at the time of the execution thereof.

Executed by the parties this ____ day of ____, 19____

[illegible] TIFFANY HOMES
(Name of Dealer-Seller)

→ By ____
(Signature of Representative)

SIGNATURE OF BUYERS AND OTHERS OBLIGATED HEREON

X ____ (SEAL)
(Buyer)

X ____ (SEAL)
(Buyer)

X ____ (SEAL)

X ____ (SEAL)

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

Form 4631
2-OO56-12

ADDITIONAL TERMS AND PROVISIONS

It is agreed that the Collateral, wherever placed, shall remain personal property and shall not become part of the freehold. Buyer agrees to execute, at Seller's request, sufficient documentation to enable Seller to perfect its security interest in the personal or real property, or both, securing this transaction, and, if Buyer applies for a Certificate of Title, Buyer will have Seller's lien noted thereon, and will, if allowed by law, deliver or cause to be delivered the Title to Seller.

Buyer agrees that he will not sell, assign or dispose of all or any part of said Collateral; that he will pay all taxes and assessments of any nature; that he will not permit or allow any adverse lien or encumbrance whatsoever; that he will not use the Collateral or any part thereof in violation of any state, federal, or municipal law; and that he will not remove the Collateral from the state and county of residence without the written consent of the Seller.

Neither loss nor injury to said Collateral shall relieve Buyer of his obligation hereunder. Buyer agrees that he will at his own expense obtain and keep in force fire, theft and c.a.c. or comprehensive insurance, and collision insurance when said Collateral is [illegible] for such periods and amounts and written by such insurers as may be satisfactory to the Seller, with proceeds thereof to be payable as the interests of the parties shall appear. If the cost of insurance coverage upon said Collateral is included herein, Buyer shall deliver to the Secured Party a fully paid up policy of insurance against the aforementioned hazards within five days from the date hereof, with a loss payable clause in favor of the Secured Party. If Buyer fails to deliver such policy, or if any policy required hereunder is subsequently cancelled or expires, Buyer shall immediately furnish to the Secured Party a fully paid replacement policy suitable to the Secured Party. If Buyer fails to perform in any respect heretofore mentioned, Secured Party, at its option, is authorized and may, but is not obligated to, insure or renew coverage and pay the premium for same in behalf of the Buyer. Buyer promises to repay the cost thereof within 10 days of notice by the Secured Party and, if not so repaid, such amounts shall be added to and become a part of the debt secured hereby. [illegible] at Secured Party's sole option, being applied to Buyer's debt [illegible] Secured Party's option, shall be returned to Buyer. In order to implement the assignment contained immediately above for the purposes set forth therein, Buyer appoints Secured Party as the Attorney-in-Fact to do the following: [illegible] settlement on Claims made on said insurance policies [illegible]

If Buyer defaults in the payment of any installment due [illegible] Seller must give Buyer a notice giving the Buyer 30 days after the notice is sent in which to cure the default. Buyer, however, is not entitled to such notice of default more than twice in any one-year period. After the 30-day-period has expired and the Buyer has not cured his default, or immediately upon Buyer's default if Buyer has already received two notices of default in the one-year-period preceding the current default, the entire unpaid balance due hereunder, together with accrued charges, shall become due and payable in accordance with the provisions hereof at the option of the Secured Party without notice or demand upon Buyer, except to the extent that the notice and cure provision, section 5.111 of the South Carolina Consumer Protection Code is applicable, and thereupon Secured Party shall have all the remedies of a Secured Party under the South Carolina Uniform Commercial Code and the South Carolina Consumer Protection Code, including the right, as provided in section 5.112 of the South Carolina Consumer Protection Code, without demand or notice, to take possession of any and all of said property, and upon such written notice as is required by law, to sell the property so taken at public or private sale, at which sale Secured Party may become Purchaser, and, out of the proceeds arising from such sale, Secured Party shall apply said proceeds, less the expenses of retaking, storing, repairing and selling, to the unpaid balance hereof, and render any excess to the Buyer. In taking possession of said Collateral, the Secured Party may take possession of any personal effects in or upon the Collateral at the time of retaking, and such property may be held by the Secured Party without liability until demanded by the Buyer. Buyer promises to pay on demand and shall remain liable for payment of any deficiency balance remaining after the proceeds of sale, less expenses of retaking, storing, repairing and selling, have been applied to the obligation.

The Buyer represents that the allowance set forth for the property traded in is the monetary value thereof assigned thereto in good faith, and that no extension of credit other than that recited herein exists or is to be made to him in connection with the purchase of the Collateral described herein. Buyer warrants that the property traded in is free from any encumbrances, and breach of this warranty shall be a breach of this contract.

If the Buyer remits payments which are less in amount than as specified herein, acceptance of same by the Secured Party shall not constitute a novation, either expressed or implied, nor shall the original terms be waived thereby. Parties hereto agree that a waiver by the Seller of any default or acceptance by Seller of any payment required [illegible] judgment against the Buyer. Buyer agrees to pay the holder's reasonable attorney's fees, not to exceed 15% of the unpaid debt after default and referral to an attorney, not a salaried employee of the holder, for collection, plus court costs. Buyer waives, to the extent allowed by law, all benefit of valuation, appraisement and homestead or other exemption laws now in force or hereafter enacted, including stay of execution and [illegible]

Whenever in this Document the context so admits, the names of Buyer and Secured Party and the terms "Buyer" and "Secured Party" shall be construed as including the heirs, representatives, successors and assigns as the case may be, and the designation used herein for the parties shall be construed as meaning the person, number and gender appropriate to the first designation of the parties. Buyer agrees that, in the event of assignment hereof, the assignee shall be entitled to all the rights and remedies of the Seller/Assignor. Seller shall not be agent of the assignee for transmission of payments or for any other purpose, and upon notice of assignment, payment to anyone other than the assignee is at Buyer's risk.

Buyer agrees that this Document constitutes the entire agreement between the parties and that any changes hereto must be in writing and signed by the parties. If the information is not available at the time of signing, Buyer authorizes Seller to insert identifying numbers or marks of the Collateral in the space provided herein on or about the date of delivery. The Parties mutually agree that the laws of the State of South Carolina shall govern each and every provision herein. Any provisions of this Document prohibited by law in the state where executed shall be ineffective to the extent of such prohibition without invalidating the remaining provisions hereof.

All words herein shall be deemed to be of the number and gender properly applicable to the Buyer or Buyers.

SELLER'S ASSIGNMENT AND WARRANTY

FOR VALUE RECEIVED the undersigned does hereby sell and assign on ______________________ 19____ to

____
(FULL CORPORATE NAME AND ADDRESS)

or order, all right, title and interest in and to the contract set forth above and on the reverse side hereof and the property covered thereby and authorizes said assignee, or order, to do every act and thing necessary to collect and discharge the same, including the right to endorse any check or draft payable to the undersigned in connection with this obligation.

We shall have no authority, without assignee's prior written consent to accept collections or receipts or consent to the return of the property or equipment or modify the terms of this contract.

WITHOUT RECOURSE

This assignment is made WITHOUT RECOURSE, except as to the following warranties and representations made by the Seller: [illegible] that the said contract [illegible] was actually executed by the person(s) named therein as Buyer(s); that said Buyer was [illegible] and competent to execute said contract at the time of the execution thereof; that the property which is the subject of the contract is [illegible] described therein; that the Seller has good and complete title to said property, subject [illegible] said property as described herein [illegible] property [illegible] municipal [illegible] the amount [illegible] purchase [illegible] actual cash value [illegible] application [illegible] Buyer with the [illegible] will defend [illegible] any facts [illegible] by the Contract [illegible] or set offs on the part of said Buyer [illegible] out of [illegible] made against [illegible] representations [illegible]

WITH RECOURSE

The undersigned GUARANTEES the within contract and the property described therein subject only to the rights of the Buyer set forth in said contract. We guarantee the payment of all amounts due and to become due by the terms of said contract and all costs, including reasonable attorney's fees, [illegible] in collecting the money or [illegible] the enforcement of any right under said contract or under this GUARANTY. We [illegible] agreed to by [illegible] satisfy the [illegible] defense Buyer may [illegible] extension [illegible] Buyer either [illegible]

SELLER

______________________________ ______________________________

For and in consideration [illegible]
thereby, the undersigned [illegible]
purchase the property [illegible]

balance of said Contract [illegible]

____

____

____
[illegible] 19

For and in consideration [illegible] Contract secured thereby, the undersigned guarantees [illegible] in the event that the [illegible] defaults in the payment of any installment or the unpaid balance, whichever is the lesser amount. Said sum shall be [illegible] when due. The liability of the undersigned shall not be affected by any indulgence, compromise, settlement, extension of credit, or variation of terms effected with the Debtor or any other obligor. Notices of acceptance of this guarantee, notices of [illegible] payment and non-performance, notices of the amount of indebtedness outstanding at any time, protests, demands, and prosecution of collection, foreclosure and possessory remedies are hereby expressly waived.

____
[illegible]

____

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

ARTHUR QUILLER, LILLIE MAE
QUILLER, and all other persons
similarly situated,

Plaintiffs

v. CIVIL ACTION FILE NO. 183-87

BARCLAYSAMERICAN/CREDIT, INC.,

Defendant

AMENDMENT TO ANSWER

COMES NOW the defendant in the above-styled action and, pursuant to Rule 15 of the Federal Rules of Civil Procedure, hereby amends its Answer as a matter of right to include the following:

EIGHTH DEFENSE

Plaintiffs' claims are barred by the doctrine of Release.

NINTH DEFENSE

The law of South Carolina controls the validity of the mobile home purchase and the other matters referred to in plaintiffs' complaint.

TENTH DEFENSE

The provisions of Public Law 96-221, Title V, Sec. 501, March 31, 1980, 94 STAT 161 referred to in plaintiff's complaint are unconstitutional.

Respectfully submitted,

MITCHELL, LOGGINS,
CAMPBELL & ELSBERRY

Douglas N Campbell
Douglas N. Campbell

Elise M Bloom
Elise M. Bloom

Suite 950, The Equitable Building
100 Peachtree Street
Atlanta, Georgia 30303
(404) 658-1400

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

ARTHUR QUILLER, LILLIE MAE QUILLER, and all other persons similarly situated,

Plaintiffs,

v.

CIVIL ACTION FILE NO. 183-87

BARCLAYSAMERICAN/CREDIT, INC.,

Defendant.

DEFENDANT'S AMENDMENT TO ANSWER

COMES NOW the defendant in the above-styled action [hereinafter sometimes referred to as "BarclaysAmerican"], and hereby amends its Answer by amending the title of said pleading: "Answer and CounterClaim" and, further, by adding the following after the ad damnum clause:

COUNTERCLAIM

1.

On or about June 27, 1981, plaintiffs entered into a Retail Instalment Contract with Vintage Enterprises, Inc. in connection with a purchase of a mobile home, as is admitted in paragraph 4 of Plaintiff's Complaint. A copy of said contract is attached to plaintiffs' complaint as Exhibit "A".

2.

Said Retail Instalment Contract was subsequently assigned to defendant as is admitted in paragraph 6 of Plaintiff's Complaint.

3.

Plaintiffs are in default under said Retail Instalment Contract, as admitted on Exhibit "C" hereto.

4.

On or about September 3, 1982, defendant sent to plaintiffs a Notice of Right to Cure, a copy of which is attached hereto as Exhibit "B", which Notice was received by plaintiffs as demonstrated by the Return Receipt shown in Exhibit "B".

5.

In said Notice of Right to Cure BarclaysAmerican made demand on plaintiffs informing plaintiffs that if payment was not received by September 23, 1982 BarclaysAmerican would exercise all of its rights under the contract including the right to repossess any property held as collateral for the transaction and the right to hold plaintiffs personally responsible for any differences between the amount the property brings at the sale and the balance due on the credit transaction.

6.

In addition, plaintiffs are hereby notified that the Retail Instalment Contract contains a provision for payment of attorney's fees in the event defendant is required to enforce the provisions in said Retail Instalment Contract by an action at law or in equity. Said attorney's fees provision will be enforced unless plaintiffs pay the full amount due and owing within ten (10) days of their receipt of this counterclaim. Upon information and belief, defendant did not receive the said sums within 10 days of plaintiffs' receipt of this notice.

7.

On or about December 28, 1982, plaintiffs executed the document attached hereto as Exhibit "C", by which plaintiffs voluntarily acknowledged their default under the retail contract and relinquished their right to possession of the subject mobile home.

8.

Plaintiffs have acted in bad faith, have been subbornly litigious, and have caused defendant unnecessary trouble and expense in the bringing of this lawsuit especially after plaintiffs specifically acknowledged their default and relinquished possession of the mobile home as shown by Exhibit "C".

WHEREFORE, BarclaysAmerican respectfully prays that judgment be entered in its favor awarding it possession of the subject mobile home and for all sums legally under the Retail Instalment Contract due, including interest, plus all costs incurred in the bringing of this counterclaim and any and all costs incurred in the defense of this lawsuit including, reasonable attorney's fees as provided for in the Retail Instalment Contract and any other relief that the Court may deem just and proper.

Respectfully submitted,

MITCHELL, LOGGINS,
CAMPBELL & ELSBERRY

Douglas N. Campbell

Elise M Bloom
Elise M. Bloom

Suite 950, The Equitable Building
100 Peachtree Street
Atlanta, Georgia 30303
(404) 658-1400

HARRISON, JOLLIES & CRAIG, APC

Daniel J. Craig by [illegible]
Daniel J. Craig

525 Ellis Street
Augusta, Georgia 30901

BarclaysAmerican/Credit, Inc.

Notice of Right to Cure

BRANCH OFFICE: 2621A Washington Rd. Augusta Ga 30903
Street City State Zip

BRANCH OFFICE PHONE NO. (404) 737-4642

YOUR ACCOUNT NO. 37759 333

DATE OF YOUR CONTRACT/LOAN 6/27/81 19

PRESENT BALANCE AS OF 8/3/82 19 19 $4309.51

A. Howard Lillie Quiller
Rt 3 Box 476
North Augusta, S.C. 29841

September 21, 1982 is the LAST DAY FOR PAYMENT
(Date)

$268.43 is the AMOUNT NOW DUE
(Amount)

You are late in making your payment(s). If you pay the AMOUNT NOW DUE (above), by the LAST DAY FOR PAYMENT (above), you may continue with the contract as though you were not late. If you do not pay by the date, we may exercise our rights under the law. These rights include the right to repossess any property held as collateral for this transaction and the right, in many instances, to hold you personally responsible for any differences between the amount the property brings in a sale and the balance due us on the credit transaction in question. If you are late again in making your payments, we may exercise our rights without sending you another notice like this one. If you have questions, write or telephone us promptly. Thanks for your cooperation.

Rick Murphy
Manager

FORM NO. 8504(S.C.)
Replaces 810

PREPARE IN DUPLICATE. INSERT IN WINDOW ENVELOPE. MAIL CERTIFIED—RETURN RECEIPT REQUESTED. RETAIN COPY & RECEIPT IN FILE.

RELEASE

YEAR 1981 Liberty	MAKE 56X24	IDENTIFICATION NUMBER 221862XU
ACCOUNT NO. 37789333	DEALER NAME (IF APPLICABLE)	

TO: BarclaysAmerican/Credit, Inc. (Secured Party:
FINANCIAL INSTITUTION

I (We) are in default of the terms of the security instrument (hereinafter called Security Agreement) held by you covering the above collateral and, therefore, voluntarily surrender and release the above collateral to you for disposition in accordance with your remedies under the Security Agreement and applicable law. I have been informed that you are declaring all remaining installments, less any required rebate specified in my (our) contract or note, due and payable.

You are authorized and directed on my (our) behalf to cancel any insurance covering the collateral and apply any refund of premiums to the account.

I (We) acknowledge notification and hereby agree that the collateral will be disposed of in accordance with Georgia law and that any Notice of Sale, or other notice required by law, should be sent to me at my address as stated in the Retail Installment contract, or if at a different address, then at the address listed below.

I acknowledge that I have been furnished with a copy of this instrument, and that all personal contents have been removed from the collateral by the undersigned, and that there is nothing therein to which I (we) will make or claim against BarclaysAmerican/Credit, Inc.

x Lillie Mae Quiller
Customer (Signature)
Rt 3 Box 474
Number, Street, City
N. Augusta Ga
State Zip

David W. [illegible]
Witness
Dec 28, 1982

x Bertha Quiller
Co-Signer or Co-Purchaser
Rt. 3 Box 474
Number, Street, City
N. Augusta Ga
State Zip

Witness

Instructions. Complete all blanks. Retain the signed original in customer file and deliver a signed copy to customer and co-signer.

Senator GORTON. With that, we would be happy to have the four of you come up and speak to us; Mr. Hudson, Mr. Evans, Mr. Fox, and Mr. Ehrle.

Mr. Hudson.

STATEMENT OF DAVID HUDSON, ATTORNEY, HULL, TOWILL, NORMAN & BARRET, AUGUSTA, GA

Mr. HUDSON. Good morning, Senator. My name is David Hudson. I and my colleagues from Augusta are lawyers in private practice. Ordinarily it's our privilege to represent insurance companies, financial institutions, State and local governments, newspapers and so forth. We are no less pleased in this instance to be representing farm families, military families, and blue collar workers who purchased mobile homes.

BRIEF OVERVIEW OF 1980 ACT

Since I'm the first to speak, it may be helpful to take some brief cognizance of the 1980 law and what it was designed to do.

Section 501 of title V of the 1980 law dealt with two competing considerations. One consideration was the need to get mortgage money into States that had artificially low usury ceilings. But because Congress knew that mobile home financing is treated under State laws which have onerous collection provisions, Congress deemed it wise to condition the granting of preemption to contracts for mobile home loans having terms and conditions that were not contrary to consumer protection regulations that would be adopted by the Federal Home Loan Bank Board. You could not have the interest rate relief unless you gave the consumer protections in your contract. It was a very simple and straightforward tradeoff. Everybody knew about it. It's apparent from the language of the act itself. It's apparent from the language in the House conference report. The Federal Home Loan Bank Board itself twice in 1980, in both May and in June, stated in the Federal Register when it was proposing these regulations—it stated in unmistakable terms, if you do not draft your contract to comply with these regulations, you're going to be subject to attack under State usury law.

Mr. Ehrle, from the Coordinating Council on Manufactured Housing Finance, testified and asked the Congress in February 1980 at page 25 of his testimony to include these consumer protections and stated in his testimony that these loans would not qualify for preemption unless appropriate purchaser protections were in the contract.

So everyone knew that to get interest rate relief their contract documents had to conform to the consumer protections that would be included in the Bank Board regulations.

And it was easy to comply. Contained in the appendix which we have submitted are the contracts of several mobile home lenders that quite easily comply with the preemption requirements. They are entitled to usury relief in the States where they have made mobile home loans under these contracts.

[The appendix material of Mr. Hudson may be found in the committee files.]

Mr. HUDSON. If anyone had consulted the standard Fannie Mae or Freddie Mac mortgage clauses which had been in existence many, many years, those standard mortgage forms contain language that would have satisfied the requirements of the consumer protection for mobile home loans.

In fact, if anyone had taken the time to read the regulations and to read their form contract, it's a very simple and easy matter to make loans which qualify for interest rate relief and at the same time are consistent with the consumer protections required by the regulations.

Now it might be helpful to talk about the status of the pending lawsuits. Let me make it clear to begin with that no court has taken away preemption from a lender because of a mere failure to include a 30-day notice on the face of the contract. That is a point that the Bank Board has addressed in some unofficial counsel opinions. But no lender has ever lost preemption on that basis.

Also, no lender has ever lost preemption solely because of the failure to have the appropriate type size. We are not dealing with anything so technical as that.

What the courts have held in instances where lenders have lost preemption include the following. They are not entitled to preemption if their contracts allow foreclosure or repossession without notice. And why are they not entitled to preemption? Because the regulations require 30 days notice.

The courts will not allow preemption if the contracts have a 5-day or a 20-day notice provision before acceleration or foreclosure. And why no preemption? Because the regulations again require 30 days.

Lenders have lost preemption if their contracts allow immediate acceleration of the full balance of the loan. And why have they lost preemption? Because the regulations require that for the first two times in a year a lender may not require a purchaser to pay any more than the payments that are in default and any applicable late charges. You cannot say you owe the full principal balance of $30,000 or $40,000.

They have also lost preemption if their contracts impose late charges in less than 15 days. And why have they lost preemption? It's because the regulations require that they give the borrower 15 days before they impose a late charge.

One of the contracts in issue even gives the lender the right to take back the mobile home if it deems itself insecure, whatever that means. And certainly that is contrary with the requirement that there be a 30-day notice.

These court decisions have only addressed the face of the contracts. The cases have not proceeded far enough to even consider the illegal conduct that the lenders have engaged in and which has been substantiated in the record in some of these cases where they actually threaten or take mobile homes without the required notice, where they fail to rebate unearned finance charges by the actuarial method which was required in the regulation; but the cases haven't reached that point. They are still dealing with the face of the contract.

LAW IS WORKING AS DESIGNED

What I submit to the Senate is this: In these cases in which we are involved, the law is working just as it was designed to work. It is working just the way the Coordinating Council in February 1980 in Mr. Ehrle's testimony asked the Congress to write the law. That is, if we don't prepare contracts that comply with the regulations, we're not entitled to usury preemption.

Now if they're using contracts that say that the lenders may do things which the regulations say they may not do, then they lose preemption. If that is hypertechnical, I confess guilty to that, and most violations of law in this country could then be labeled hypertechnical.

One point that I want to address is the contention that has been made that nobody is harmed because of these violations and that if we prevail in these lawsuits there will be a windfall to the borrowers.

Well, first of all, that name windfall, you could apply that as a label to any law you didn't like. You could apply that to the treble damages provisions under antitrust or to other laws. It's a measure that States have felt appropriate to include in their laws. You will find them in the laws of the State of Washington, for example, that we cited in our testimony.

In any event, what is the harm? The first harm is that borrowers are being charged illegal interest rates. In our society, any time that a person suffers from illegal conduct, that in and of itself is a harm to the rule of law in our society on general principles.

Second, in financial terms, these borrowers are being required in some instances to pay up to $25,000 more in finance charges over the term of the contract than they would be if the lenders had complied with the law. They are being charged those higher finance charges without the lenders having given the quid pro quo which Congress said they had to give back in 1980, that is, prepare documents not inconsistent with the consumer protections.

In actual practice, these borrowers are slaves to the homes. Most persons who bought conventional homes during the times of high-interest rates have now refinanced and they can do that because a conventional home appreciates, and even if you go into the savings and loan and have to pay new closing costs and for a new title search, the interest rates are low enough that you end up paying lower monthly payments when you refinance than you would otherwise.

Mobile homes can't do that. For some of the named plaintiffs we've run amortization schedules. Mrs. Moyer, for example, has a present principal balance on her mobile home of $30,000 after paying on it for some 3 years. The blue book value on that home is $20,000. So no bank is going to loan her $30,000 to pay off Citicorp on a home that's worth $20,000. Now if you can get somebody to cosign with you or if you're fortunate enough to have other collateral you can take to the bank, you can refinance. But if these people want to change jobs or are assigned to another military base if they're in the military, they can't sell that home. They can't have somebody just pick up the payments because no one would be foolish enough to pick up the payments on such a home when it's worth less than the amount owed on it.

So there is a real harm that is taking place every day to these people who, to my knowledge, are paying the highest long-term interest rates of anybody in America and there's no relief in sight.

So if we have found a means by which they are entitled to relief under State law, we certainly contend that they should receive that relief because the law is operating just as the lenders asked Congress to make it operate.

If I have just a moment more, I would like to speak to the FHA and VA problem. We did not address it in our written remarks and it is an issue that has been raised and I'll try to do it very briefly.

The question of FHA and VA is whether Congress intended with the March 1980 Preemption Act that mobile home borrowers, charged more in interest than State law permitted but insured by VA or FHA, are entitled to the same consumer protections as conventional mobile home borrowers. Because if they do not get it in the March 1980 act, it is not provided to the same degree, substantially less, under the VA and FHA.

So to fully protect those mobile home borrowers, the 1980 Preemption Act has to apply.

Looking at the testimony of the Coordinating Council, they want to have it both ways. If they argue that the December 1979 preemption applies for FHA and VA, then that doesn't protect them in Georgia because as the Coordinating Council acknowledges in its statement, Georgia thereafter changed the finance limits on mobile homes and by the express terms of the December 1979 preemption it would no longer apply in a State that thereafter changed its interest limits. So if they're trying to preempt interest under the 1979 act, it doesn't apply in my State because Georgia changed the law and most other States will have changed the finance limits since December 1979.

They're not protected under the 1980 Preemption Act which is generally the subject of these hearings because they did not give the consumer protection provisions. So it is our contention that these people are entitled to the same panoply of protections that a conventional mobile home purchaser is entitled to receive if State interest rates are to be preempted.

I think that concludes my time and later if you have other questions, I'd be delighted to respond to them.

[The complete prepared statement follows:]

IN THE UNITED STATES SENATE

BANKING, HOUSING AND URBAN AFFAIRS COMMITTEE

FINANCIAL INSTITUTIONS & CONSUMER AFFAIRS SUBCOMMITTEE

Honorable Slade Gorton, Presiding

November 6, 1985

IN RE:	Mobile Home Financing Legislation S.L.C. Draft No. 089910.415	) TESTIMONY ON BEHALF OF MOBILE HOME PURCHASERS

DAVID E. HUDSON
HULL, TOWILL, NORMAN & BARRETT, P.C.
POST OFFICE BOX 1564
AUGUSTA, GEORGIA 30913

JOHN B. LONG
NIXON, YOW, WALLER & CAPERS
1500 GEORGIA RAILROAD BUILDING
AUGUSTA, GEORGIA 30901

THOMAS W. TUCKER
DYE, MILLER, TUCKER & EVERITT
POST OFFICE BOX 2426
AUGUSTA, GEORGIA 30903

Attorneys For 7,500 Mobile Home Purchasers

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INTRODUCTION

We are private attorneys who are counsel for plaintiffs in five pending class actions concerning mobile home financing in the State of Georgia. Altogether, the number of purchasers whom we represent is approximately 7,500 in Georgia and South Carolina. All of these are on Georgia contracts, but several hundred of them purchased their homes in Georgia and reside in South Carolina.

We are also co-counsel in two cases which are pending in North Carolina. Those cases are against two of the same lenders (Citicorp and BarclaysAmerican) and we do not yet know the number of mobile home purchasers affected by that litigation.

As attorneys in class actions, we have fiduciary duties imposed by law to represent the interests of our named and unnamed clients. Almost fortuitously we learned of the proposed legislation in S.L.C. Draft No. 415. It has the potential to adversely affect the rights of our clients in the pending cases. Therefore we have deemed it incumbent upon us to speak in opposition to it.

In analyzing the proposed amendments, we also see that they contain many unwise provisions concerning mobile home financing contracts which may be executed in the future. Out of respect for the legislative process, we also offer our comments concerning these provisions.

SUMMARY OF THE TESTIMONY

In an unprecedented display of gall, two or three sophisticated finance companies who have been caught collecting money illegally from mobile home purchasers seek rescue from Congress. The request comes in spite of the fact that most other lenders conducted their affairs lawfully under the same 1980 Act and FHLBB regulations. The lenders ask to be pardoned from the consequences which Congress and the FHLBB made absolutely clear in 1980.

The lenders base the request for rescue on two themes:

First they assert that calamity will occur if there is no relief. Yet they fail to make available the facts to support this claim. Indeed the available facts and law from various states show that the theme of ruinous harm is a sham.

The second theme advanced by the lenders is that their failure to obey the law did not actually harm the mobile home purchasers who were overcharged. Even though purchasers have been overcharged what for many amounts to a year's salary over the term of a contract, the lenders assert that if they had used correct forms then, what is now illegal would have been legal.

This argument is so remarkable because it describes a situation that is common. American law, state and federal, is filled with requirements which companies must either meet or suffer penalties or financial loss for failing to do so. The rule of law is premised upon the assumption that those within its ambit will do what is necessary to comply with the law. If it is wise public policy to rescue companies that fail to properly prepare commercial documents, and to thereby allow them to continue to take funds from victims who were to be protected by the law, major changes in American jurisprudence and the role of Congress are in store.

In the past, Congress has provided rescue for companies who have made mistakes in the management of their affairs. Lockheed and Chrysler come to mind. In each instance, however, detailed factual support for the rescue was presented, and the potential cost of the rescue was spread among all citizens. The present lenders cannot support a position that it is in the public interest that they be rescued, and they seek to have the burden of the rescue fall not on the public at large but upon those who are their victims.

It is unthinkable that if Citicorp had given the same attention and resources to complying with the laws on mobile home financing as it does to legal documents for loans to business customers, or for the legal documents involved in a securities sale, or for preparing its own income tax returns, it could not have acted legally. Thus far Citicorp has resisted all efforts in pending litigation to determine how it came to violate the law as it does. One must suspect that this company has devoted more resources to the present effort to obtain retroactive rescue than it did to compliance with the law when it made loans to mobile home purchasers.

Any rescue must be based on principles of public policy that could be applied in all circumstances. If justification for a change exists only for a handful of companies, then what is requested is obviously for the benefit of a special interest only. For example, it can be argued that mobile home purchasers have unwisely contracted to pay up to 20% interest for 15 years on mobile homes that depreciate. Unlike the owner of a conventional home, they cannot obtain refinancing at current rates. They are locked into loans with sky high interest rates at a time when inflation hovers around 4%. Thus these loans return a real interest rate of 16% to the lenders. Is it not just as fair and just as much in the public interest for a law to be passed amending the contracts of these mobile home purchasers to require that interest rates on these loans be adjusted semiannually or quarterly based on existing treasury bill rates?

It must also be made clear that the lenders intend to use the amendment as a defense to their other misdeeds beyond contracting for illegal finance charges. If passed, they will argue that the law is a defense for unauthorized collection activities and for illegal calculations of refunds of unearned finance charges.

For a law to have meaning, it must be enforced. In 1980, Congress told lenders that they could not avoid state limits on finance charges in the sale of a mobile home unless they used "terms and conditions" in compliance with FHLBB regulations. To not enforce that law is to invite its violation and that of many other laws as well. It would trivialize the legislative process and undermine certainty and predictability as elements of American law.

I. EXISTING LAW

In March of 1980, Congress passed the Depository Institutions Deregulation and Monetary Control Act of 1980, Public Law 96-221, 94 Stat. 164 (March 31, 1980). The pertinent section of the Act is Title V, Section 501, at 12 U.S.C.A. Section 1735f-7, note, and will be referred to as the Preemption Act.

Section 501(a)(1) of the Preemption Act provided that state limits on finance charges in connection with a loan, mortgage or credit sale on a residential manufactured home (mobile home) would be preempted after March 31, 1980. Section 501(c) of the Act provided that subsection (a)(1) would not apply "to a loan, mortgage, credit sale" on a mobile home "unless the terms and conditions relating to such loan, mortgage, credit sale" complied with consumer protection provisions in regulations prescribed by the Federal Home Loan Bank Board (FHLBB). In other words, to enjoy preemption from state limits on finance charges, the "terms and conditions" of the credit sale had to comply with the regulations. Nothing could be simpler or more straightforward.

House Conference Report No. 96-842 in discussing preemption of finance charges in connection with mobile home loans stated the following:

> Manufactured home financing is covered by the mortgage usury preemption as long as such financing complies with the consumer protection provisions specified in regulations of the FHLBB. The conferees intend that in developing these regulations the Bank Board should look for guidance to regulations, handbooks and circulars of the FHA and VA regarding mobile home lending, the provisions of the standard conventional mortgage forms of FHLMC and FNMA, and the provisions of the Uniform Consumer Credit Code. The conferees wish to emphasize that consumer protection provisions regarding manufactured home financing adopted in regulations of the Bank Board shall not preempt any state law which provides stronger protection to the consumer. (emphasis added).

Reprinted in 1980 U. S. Code Congressional and Administrative News, p. 309. Again the message is clear and unmistakable.

The Federal Home Loan Bank Board in adopting regulations pursuant to this Act, made it clear that the sale or loan documents had to comply with the consumer protection regulations or else the transaction would be subject to attack under state usury laws. On May 12, 1980, at Volume 45, p. 31122 of the Federal Register, the Board stated as follows in connection with the regulations which it was proposing:

> Once the Board adopts such regulatory provisions..., state usury ceilings may be exceeded by a lender covered by the Act only if the loan complies with such regulations. A mobile home loan not complying with the regulations would be open to attack under state usury laws. (emphasis added).

In issuing the final regulations on June 30, 1980, the Board stated as follows at Volume 45, p. 43681 of the Federal Register:

> The rules prescribe consumer protections which must be included in loans secured by first liens on mobile homes before such loan are eligible for the state usury law exemption contained in Section 501 of the [Preemption Act]. (emphasis added).

In the first substantial litigation concerning compliance vel non with the requirements of consumer protections in the FHLBB regulations, the Eleventh Circuit Court of Appeals has held unanimously that preemption is unavailable to a creditor "if the financing agreement contains express provisions authorizing conduct contrary to the statute or regulations." Grant v. General Electric Credit Corp., 764 F.2d 1404, 1405-06 (11 Cir. 1985) (en banc).[1]

CONCLUSION: From the text of the Act passed by Congress, from the interpretation given to that legislation by the FHLBB in 1980, and from the decision of the Eleventh Circuit Court of Appeals, it is firmly established that preemption is not available if a lender uses a loan contract that has provisions clearly contrary to the requirements of the statute and regulations.

II. STATUS OF PENDING LITIGATION

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[1] As will be discussed later, the Court split by votes of 6-5 and 8-3 on whether two particular form contracts were contrary to the regulations. But as to the principle that preemption was not available for a contract authorizing conduct contrary to the regulations, there was no dissent. There was also dissent as to the proper remedy for a contract found to be in violation, but that concern is merely academic at this point as no case has proceeded far enough in the trial court for remedy to have been considered.

(A) Quiller v. BarclaysAmerican/Credit, Inc., 764 F.2d 1400 (11 Cir. 1985) (en banc). In a 6-5 decision, the Eleventh Circuit Court of Appeals held that the language of the Quiller contract is contrary to the FHLBB regulations. The Court rejected the argument of plaintiffs that the borrower's right to 30 days' notice prior to acceleration had to be included in the contract. BarclaysAmerican filed its petition for certiorari with the U. S. Supreme Court in September. Plaintiffs have filed a brief in opposition.

Because the district court and the Court of Appeals decided this case on the pleadings and the face of the form contract, no court has yet considered the conduct of BarclaysAmerican. However, the record in the case shows that not only was the Barclays contract contrary to the regulations, Barclays used collection practices prohibited by the regulations. (See pages 1-9 of plaintiffs' brief in opposition to the petition for writ of certiorari for an account of these facts. These pages are submitted as Appendix A to this testimony).[2]

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[2] In particular, BarclaysAmerican sent to Quillers a 20 day notice to cure default rather than 30 days as required by 12 C.F.R. Section 590.4(h). The lender advised the Quillers that on another default there would be no such notice. This violated the same regulation. True to its word, BarclaysAmerican thereafter did attempt to repossess without further notice, and also demanded the payment of more funds than permitted by 12 C.F.R. Section 590.4(c).

Plaintiffs have not yet had the opportunity to conduct any discovery from agents and employees of Barclays, so it cannot be determined whether Barclays is committing other violations.

(B) Grant v. General Electric Credit Corporation, 764 F.2d 1404 (11 Cir. 1985) (en banc). In this case, a panel of the Eleventh Circuit correctly found that the GECC contract was contrary to the FHLBB regulations. Upon reconsideration en banc, the Court held by a vote of 8-3 that the GECC form contract complies with the regulations. In October, the plaintiffs filed a petition for certiorari with the U. S. Supreme Court based primarily on their contention that the contract does authorize conduct inconsistent with and contrary to the regulations. A response from GECC is due to be filed shortly.

Since the case was disposed of on the pleadings and the face of the form contract, there has been no opportunity for discovery to see whether the conduct of GECC with its borrowers has been in conformity with the regulations.

(C) Moyer, et al. v. Citicorp, et al., Civil Action No. 183-93, United States District Court for the Southern District of Georgia, Appeals No. 84-8616 and No. 84-8727 pending in the Eleventh Circuit Court of Appeals.

In this case, the district court held that Citicorp form contracts are contrary to the FHLBB regulations. After

Citicorp filed an appeal with the Eleventh Circuit, the district court also found that Citicorp was engaged in collection practices contrary to the FHLBB regulations and entered an injunction requiring Citicorp to report all foreclosures and repossessions to a monitor and ordering Citicorp to comply with FHLBB regulations pending the appeal. Citicorp even appealed from being ordered to comply with the Act and regulations pending further order. Copies of the findings of the district court and its injunction order are included as Appendices B and C[3].

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[3] As found by the district court, Citicorp without a 30 day notice of the right to cure, threatened immediate loss of mobile homes to borrowers, and threatened that personal belongings would be lost in the homes. As a result of these threats, two purchasers left their homes. The judge stated that he could not "observe anything in the nature and type and aggressive sort of collection tactics that is employed by Citicorp in this case...that is distinguishable or different from the usual tactics that are so often associated with small loan companies, sales finance companies, or Industrial Loan Act lenders."

In the North Carolina case against Citicorp, No. 85-CVS-2805 in Wake County, the record shows that Citicorp sent a 30 day notice, but then less than a week later attempted to have the purchasers sign a "consent to foreclose." Then prior to the expiration of 30 days, Citicorp arranged for a mobile home lot to begin offering the Crowes' home for sale. Two weeks after the initial 30 day notice, Citicorp sent the Crowes a "notice of sale" stating that their home would be sold within the 30 day period. It was, in fact, sold and repossessed. (Appendix D).

Since the order of the court, sworn affidavits have been submitted to the court showing that Citicorp is accruing interest under its form contracts using a method prohibited by the FHLBB regulations. This has surfaced as borrowers have requested payoffs on their contracts and have learned from Citicorp that the principal debt has not been reduced as is required under the actuarial method mandated by 12 C.F.R. Section 590.4(c). This evidence is submitted as Appendix E[4].

It has also been learned that in spite of the court's injunction, Citicorp continues to employ collection practices contrary to the FHLBB regulations for a contract which exceeds state limits on finance charges. Affidavits to this effect are attached at Appendix F showing the actual repossession of a mobile home without notice[5]. Also attached as Appendix G is a recent letter from a Citicorp mobile home purchaser showing an attempt to collect the September 1985 payment without 30 days' notice as required by the Act and regulations.

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[4] The affidavits of Mr. and Mrs. Perkins show that they were quoted a payoff through July 26, 1984, by Citicorp of $16,785.46. The affidavit of a certified public accountant shows that the correct payoff using the actuarial method would be $16,181.03. The affidavits of Mr. and Mrs. Perry show that they were quoted a payoff by Citicorp of $20,753.92 through November of 1983. The accountant's affidavit shows that the correct payoff should have been no greater than $20,119.20. Mrs. Sanders received a payoff from the mobile home seller, who assigned its contract to Citicorp, of $21,236.00. The correct payoff after 24 monthly payments using the actuarial method would have been $20,152.70. Citicorp was seeking more than the original principal!

It must be stressed that we have uncovered what is surely only the tip of the iceberg. Under the order of the district court, attorneys for the parties are prohibited from initiating contact with class members. The evidence which has been obtained thus far is due solely to class members who on their own contacted attorneys for the plaintiffs. Even though this litigation has been pending for some two and one-half years, Citicorp, through delays and appeals, has resisted making any information available as to how it prepared its form contracts, the collection practices which it has used, and complaints it has received from mobile home purchasers.

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[5] The Thigpen affidavits show that this mobile home was paid current through December 20, 1984. Without any notice whatsoever, Citicorp had the mobile home repossessed prior to December 7, 1984. When this matter was brought to the attention of the district court, Citicorp submitted the affidavit of its employee Jack Ohlin who stated under oath that the account had been paid current only through November 20, 1984. Just last week, a discovery order of the district court required Citicorp to produce the actual account cards for the Thigpen mobile home. This Citicorp record shows that in fact the mobile home was paid current through December 20, 1984 and that the affidavit of Mr. Ohlin was false.

(D) Wood v. Fort Wayne Mortgage Co., Civil Action No. 184-024, Appeal No. 85-8297, and Doyle v. Southern Guaranty Co., Civil Action No. 184-180, Appeal No. 85-8187. In these two cases, the federal district court found the contracts of the lenders to be inconsistent with and contrary to the FHLBB regulations. Both cases are pending on appeal in the Eleventh Circuit. There has been no opportunity to discover whether these lenders also engage in conduct violative of the regulations.

(E) Crowe v. Citicorp Acceptance Co., Civil Action No. 85-10SC969, Tenth District, North Carolina Court of Appeals, Bass v. BarclaysAmerican/Financial, Inc., Civil Action No. 85-CVS-811, General Court of Justice, Superior Division, Durham County, North Carolina, and Dinkins v. First Carolina Financial, Civil Action No. 185-241, United States District Court for the Northern District of Georgia. These cases contend that mobile home financing contracts contain provisions which are contrary to and inconsistent with the consumer protection requirements of the Preemption Act and regulations. No substantive rulings have yet been made in any of these three cases. No factual discovery has taken place.

III. ISSUES BEFORE THE COMMITTEE

(A) Is there a need for prospective legislation to eliminate uncertainty for lenders who wish to make mobile home loans exempt from state limits on finance charges?

(B) Should legislation be passed to provide a retroactive rescue for mobile home lenders who are charging illegal finance charges under the laws of certain states?

IV. PROSPECTIVE LEGISLATION?

In theory, no one should oppose legislation to clarify the law and make it easier for all parties to comply with the consumer protection requirements of the 1980 Preemption Act and the FHLBB regulations. However, it is almost certain the the legislation is not needed. Even if it is, S.L.C. Draft No. 415 goes beyond providing clarity for the future and vitiates existing protections for mobile home purchasers.

On the issue of need, we submit that if inquiry is made, it will be found that mobile home lenders have already conformed their standard contracts to the requirements of the Preemption Act and the regulations. Most mobile home loans made in the State of Georgia complied with the Act from the beginning. Those that did not, such as Citicorp, Barclays, etc., will surely have revised their documents by now.

If they have not, all that is needed would be language like that included in S. 2851 in the 98th Congress:

> The Federal Home Loan Bank Board shall publish model disclosure forms and clauses to facilitate compliance with the disclosure requirements and to aid the consumer in understanding the transaction. A creditor who properly uses the model shall be deemed in compliance with the disclosure requirements.[6]

In regard to S.L.C. Draft 415 undercutting the rights of future mobile home purchasers, that is found in proposed Section 502(b) that adds subsections (h) and (k) to the original Preemption Act.

The proposed subsection (h) gives borrowers a maximum recovery of $1,000 and limits class action liability to $500,000. What it overlooks is that when a lender unlawfully exceeds state finance charge limits, the lender can collect thousands of dollars of unlawful finance charges from the borrower. The legislation would allow the borrower to recoup but a part of his loss. In addition, where a lender makes hundreds of unlawful loans in a state, the lender can still profit from the proposed subsection's limit on class action liability of $500,000. For a lender who will collect millions of dollars in unlawful finance charges, a $500,000 maximum penalty could be a good bargain.

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[6] Actually, the 1980 Preemption Act was not "disclosure" legislation such as Truth-In-Lending. By requiring the "terms and conditions" of a mobile home credit sale to comply with the FHLBB regulations, the law was designed to give substantive legal rights to purchasers. Accordingly, the word "disclosure" should be removed from any amendment and replaced by "consumer protection." See 15 U.S.C.A. Section 1692k(e) where a similar defense is provided under the Fair Debt Collection Practices Act.

Proposed subsection (k) would further undermine the rights of borrowers by overriding state law and requiring any legal action to be brought within one year of the contract. The contracts themselves usually run for 15 years. It may not be until the contract has been in effect for several years that a borrower has financial difficulties and is confronted by unlawful provisions which a creditor has included in a form contract or by unlawful collection practices from the creditor. Limiting the filing of such a lawsuit to one year after the contract date is contrary to most state law provisions which allow creditors to seek a forfeiture of unlawful interest at any time that the contract remains unpaid[7].

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[7] E.g., Washington (State) Statutes Section 63.14.152 which allows suit for up to six months after payment of the debt on a contract which violates the Retail Installment Sales Act.

V. RETROACTIVE DEFENSES FOR LENDERS WHO ARE CHARGING ILLEGAL INTEREST RATES?

Language is included in the proposed amendment which will be used by the finance companies as a defense to violations of state law. The lenders have vioalted the law by charging finance charges in excess of legal limits while contracting and acting contrary to the requirements of the Preemption Act and regulations. Would the enactment of a retroactive bail-out be wise? Is it needed? Is it legal? Can it be justified? Is it fair?

(A) Misconduct of the lenders. The limited information which has been gathered in the pending litigation shows that lenders have disqualified themselves from claiming preemption of state finance charge limits in several ways.

(1) Lenders have used form contracts which allow conduct contrary to the Preemption Act and regulations;

(2) Lenders use collection practices, such as demands or threats for immediate acceleration, foreclosure or repossession, that are prohibited by the Preemption Act and regulations;

(3) Lenders refund unearned finance charges to mobile home purchasers in amounts less than the minimum required by 12 C.F.R. Section 590.4(c); and

(4) Lenders actually gain possession of mobile homes which they financed either by taking action or threatening action prohibited by the Preemption Act and the regulations.

(B) Affect of the proposed amendment.

S.L.C. Draft No. 415 includes a proposed addition to Section 501 of the Preemption Act adding a new subsection (i)(2). It would give lenders a defense to any wrondoing since March 31, 1980 if a lender substantially complied with the regulations, and sends a notice within 60 days of the act correcting any defects in the language of its documents. This will surely be used by lenders, if passed, in defense of all wrongdoing which have occurred.

This will include loans in excess of state finance charge limits but on contracts which did not comply with the Preemption Act and regulations. They will use it to defend against collection practices which were not authorized by the Act and regulations even though finance charges in excess of that allowed by state law were charged. It will be used where lenders have violated the regulation requiring rebates of unearned finance charges to be on the actuarial method.

As for purchasers who have already lost their homes by surrender or repossession, the proposed amendment states that they will continue to have an action for any "actual damages incurred." However, the lenders will attempt to use this to their advantage as well. The only remedy in most states will be the forfeiture of illegal finance charges. Repossession without notice will have been authorized by a state's version of UCC Section 9-503. Thus the lenders will urge a defense that even these borrowers have no cause of action and that they did not suffer "actual damages."

(C) The extent of the problem. So far, courts have determined only that BarclaysAmerican, Citicorp, Fort Wayne Mortgage Company, and Southern Guaranty Company are not entitled to preempt Georgia limits on mobile home finance charges because of contracts authorizing conduct contrary to the Preemption Act and regulations[8]. Only one case (Citicorp) has progressed far enough for a court to determine whether or not a lender has engaged in conduct contrary to the Act and regulations, but evidence to that effect has been placed on record in the BarclaysAmerica case as well. It is known with certainty at this point that courts have determined that four lenders are not entitled to preemption on the form contracts which have been litigated in those cases. Whether these lenders used these or other forms in other states is not known.

On the other hand, we have found no banks or savings and loan associations which made mobile home loans using contracts contrary to the Act and regulations. We have found other finance companies who did make mobile home loans and used contracts which complied with the Preemption Act and regulations. Included in Appendix H are copies of contracts used by CIT Financial Services, Sun America, Trust Company Bank, and Green Tree Acceptance, Inc. which comply with the law. Special note should be given to the form contracts used by Green Tree and Sun American. They show in the margins that they were prepared by printing companies, one in Marietta, Georgia. When a job printer can prepare a form that complies with the law, it causes one to question why sophisticated, national lenders could not. In any event, the forms that are in compliance do not contain language that would give the lender the right to accelerate a loan immediately upon default, collect the entire unpaid balance upon default, or do these things in less than 30 days after notice to the purchaser as required by the Preemption Act and regulations.

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[8] The pending court decision is that GECC has used a contract that is not contrary to the Act or regulations.

It must also be pointed out that our survey of the types of contracts in use is limited by what has come to us in the course of our normal law practices. We have no means available to survey the types of contracts used around the country by all of the lenders who have made mobile home loans. The organizations who would have that ability would be the trade associations representing mobile home financiers whom we understand are scheduled to appear before the Senate Banking Committee.

(D) Economic impact of lender violations. In a brief filed with the Eleventh Circuit Court of Appeals, the trade association for mobile home lenders has argued that if plaintiffs prevail on the issues presently in litigation, the economic impact to mobile home lenders will be $17.2 billion. (excerpts from the brief of the Coordinating Council of Manufactured Housing Finance are attached as Appendix I). This assertion is utter nonsense.

For the figures of the Coordinating Council to be correct, the following must be assumed:

(1) That every contract for financing of mobile homes was on a form which contained provisions contrary to and inconsistent with the Preemption Act and regulations. We know that this is not true.

(2) Every loan made in the United States between January 1, 1980 and June 1, 1984, was at a finance rate in excess of state law. We know that this is false because in some states[9], there was no finance charge limit on mobile homes sales. In states like South Carolina and

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[9] Alabama, Arizona, Illinois and Nebraska are a cross-section of such states. There are others.

Pennsylvania, the limit was 18% and the rate on many homes during this period was less than that. In Georgia, the law changed effective April 1, 1983 and finance charge limits were then removed. We have not made a survey of all of the other states, but we are not the ones who have made this outlandish assertion. It seems incumbent upon the Coordinating Council to make a survey of its members to see what types of contracts were used and what the laws were in the various states.

The foregoing is not to minimize the extent of wrongdoing by the lenders which have been identified and found by federal courts to have used contracts which are not entitled to preemption. Approximately 4,000 Citicorp contracts in violation of Georgia law have been identified. Accepting the figure of the Coordinating Council that the average finance charge in Georgia between 1980 and 1984 was $15,677, Citicorp is collecting $62,708,000 in illegal finance charges[10]. 775 BarclaysAmerican contracts have been identified. Using the same methodology, this lender has contracted to collect $12,149,675 from mobile home purchasers in Georgia which is unlawful. 314 Southern Guaranty contracts have been identified which amount to $4,922,000 in illegal finance charges being collected. For Fort Wayne Mortgage Co., 866 contracts are involved and $13,576,000 in illegal finance charges.

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[10] This aggregate sum is being collected illegally because it exceeded by some $17,307,408 the permissible aggregate finance charges under Georgia law. On a 15 year loan, the permissible 10% add-on rate in Georgia equates to approximately 14 1/2% simple interest. The 4,000 Citicorp loans are at an average simple interest rate of 18 1/2%. Thus Citicorp was charging 27.6% in finance charges in excess of that permitted by Georgia law.

Beyond these figures, one can only speculate about the extent to which lenders may be barred by courts from collecting illegal charges in other states. To do so, one would have to know the laws of each state, the types of contracts used by lenders in those states, and the number of loans made under each type of form contract. Nevertheless, the amount of money which it is known that the lenders are illegally collecting should be enough to shock the conscience of anyone asked to consider a legislative "pardon" for these lenders that would allow them to continue to collect these finance charges to which they are not lawfully entitled.

(E) Analysis of lender misconduct. The finance companies who seek legislative relief for their past wrongs cannot make the argument that they relied in good faith on any administrative interpretations or opinions. There is simply no evidence of that and these lenders have resisted all efforts to determine why they prepared their contracts as they did. There is nothing which has been tested by testimony and cross-examination under oath to reflect one way or another on the efforts made by the lenders to comply with the law. In the case of BarclaysAmerican, during the early part of the litigation, and with Citicorp even now, there is evidence that these lenders have continued to take positions and deal with borrowers contrary to the requirements of the Preemption Act and the regulations.

Congress may legitimately take notice of the fact that lenders such as Citicorp (one of, if not the largest company in America) and BarclaysAmerican are large businesses and are presumably sophisticated enough to know that certain business activities must be conducted in compliance with the law. Yet we are left to guess whether these lenders applied the same care and analysis to the preparation of their mobile home form contracts as they customarily do when they make loans for shopping centers, aircraft purchases, or industrial expansion. One must wonder whether they devoted the same expertise and resources to these form contracts as they do when they are involved in the sale of corporate securities or debentures or as when they calculate and file their federal income tax returns. Judging from the results, it is obvious that they did not.

On the other hand, many lenders quite easily complied with the law in order to earn state preemption. The requirements are simple. The consequences of noncompliance were well known. The question of why a handful of lenders did not do what was required remains unanswered.

(F) The borrower's perspective. We urge the Committee to consider pages 2 through 9 of the amicus brief of the Georgia Legal Services Program, Inc., Housing Advocates, Inc., and Ohio Mobile Home Owners Network filed in the Quiller v. BarclaysAmerican/Credit case in the Eleventh Circuit Court of Appeals. Those pages are incorporated herein by reference and are submitted as Appendix J. To summarize, this brief shows the acknowledgment by FHLBB general counsel in July, 1981, of the history of abuse associated with mobile home lending. General counsel opined that mobile homes are "usually financed under ... laws which allow lending practices that are not appropriate for loans as large as that required in a mobile home sale." The amicus brief further summarizes findings by the Federal Trade Commission in 1984 that mobile home purchasers are highly susceptible to pressure tactics from creditors. Mobile home purchasers, on the average, have lower incomes and less education and business expertise than other home purchasers. In practice they have no alternative for obtaining financing other than through the dealer from whom a purchase is made.

The present cases in litigation demonstrate the wisdom of Congress in not allowing mobile home lenders to collect the higher interest rates without using loans which have "terms and conditions" in compliance with the Act and regulations.

(G) Balancing of the harms. The notion has been advanced that the wrongs committed by the lenders are relatively small compared with the magnitude of the relief to which the borrowers will be entitled under state law. Thus the argument goes that it is in the public interest for the lenders to receive a legislative reprieve.

We submit that enormous damage will be done to the public interest if Congress were to act on the basis of such an argument. The civil law of this country is replete with requirements, which to the uninitiated may seem technical, which when not met can result in severe economic consequences. Appendix K submitted herewith is a brief and partial analysis of some of those areas. They exist under the federal securities laws, the federal tax laws, Federal Rules of Civil and Appellate Procedure, and environmental laws to mention but a few.

The approach suggested by the lenders should be analyzed as a neutral principle of public policy to be applied across the board. To do otherwise would mean that it serves only special interests in the case at hand. If it is a principle that should be applied in other contexts, then it merits serious consideration. However, reasoned analysis should quickly show that the concept is flawed.

As pointed out previously, it would undermine significant portions of federal law in other contexts. In fact, the concept of using legislation to retroactively pardon past misconduct by balancing the quantum of wrongdoing against the quantum of harm would seriously undermine predictability in most areas of civil law. If a statute has a legitimate government purpose, do we not enforce it when it is violated by someone who claims to have been ignorant of the law? The answer is no unless we are prepared to make significant changes in the legal principles on which civil jurisprudence is founded.

(H) Principles of federalism. One must also decide whether a sufficient case has been made, based on the proven misconduct of four lenders, for federal preemption of an entire area of law heretofore left to the states. For the relevant period under consideration, it was the law of Georgia and other states that mobile home financing contracts could not charge more than a certain finance charge[11]. Four lenders have been found to have violated this rule of law adopted by Georgia for transactions in that state. In the Preemption Act, Congress had provided a means by which mobile home lenders could disregard the finance charge limits in a state and charge the higher rates. But as an accommodation to state interests the preemption was not made absolute. Lenders had to qualify by preparing contracts with "terms and conditions" consistent with the Preemption Act and regulations. If they did not do so, the contract was governed in its entirety by state law.

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[11] In Georgia it was 10% add-on interest. O.C.G.A. Section 10-1-33. This amounts to 14 1/2% simple interest on a fifteen year loan. Examples from other states were 10% add-on in Florida, Statutes Section 520.08, and Missouri, Statutes Section 365.120. In Pennsylvania, 69 Penn. Stat. Section 1501, and Connecticut, Section 42-85, the limit was 18% simple interest.

The retroactive remedy now sought by the lenders would entirely preempt state law control over permissible finance charges on mobile home contracts five years after the contracts were made by the parties. It would do so by giving lenders a painless method to avoid state law violations on existing contracts[12]. On future contracts, this would be done by simply adding a label identifying the Preemption Act on the form of the loan or sale documents[13]

The question must be asked whether this is a neutral principle of public policy which should be applied in other contexts. If not, then this is special interest legislation to favor one group at the expense of innocent third parties. The question needs to be asked then whether Congress supports the proposition that it should enact other laws to relieve large companies of the financial consequences of violating hundreds of other state laws. Simply posing the question makes clear that the answer should be no[14].

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[12] Proposed amendment, Section 502(b) adding (i)(2) to the original Act.

[13] Proposed Section 502(a) adding a new (c)(1) to the original Act.

(I) A retroactive abolition of the claims of mobile home purchasers would be constitutionally infirm. In Georgia, and in any other states where lenders exceeded state finance charge limits with contracts which were contrary to the Preemption Acts and regulations, mobile home borrowers presently have a legal right to remedies under state law. Under certain of the form contracts (BarclaysAmerican and Southern Guaranty, for example), the contract documents provide borrowers with the specific right that state law lending limits would not be exceeded. These rights equate with property rights in that they are for sums certain and can be transferred or assigned to third parties. If Congress retroactively abrogates property rights of individuals, it can only do so upon the payment of just compensation. The burden must be spread to taxpayers as a whole and not inflicted on just the individuals affected.

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[14] For example the State of Washington has complex requirements for Retail Installment Sales. Statutes Section 63.14.010, et seq. For exceeding the permissible finance charge on a transaction, the penalty is twice the finance charge paid, plus the unpaid balance of the finance charge, plus attorney fees. Section 63.14.180. In Connecticut, the penalty is loss of the finance charge. Conn. Statutes Section 42-99. In Pennsylvania, treble damages can be awarded for willful violations on two or more transactions. 69 Penn. Statutes Section 2204. Because a creditor can suffer severe consequences should Congress undertake to preempt these laws as well? See, Barron's, October 21, 1985, p. 14 for a discussion of Congress' refusal to rescue insurance companies from state laws making them cover losses under federal environmental laws.

The Supreme Court recognized this requirement in the case of United States v. Security Industrial Bank, 459 U.S. 70, 74 L.Ed.2d 235 (1982). The Court held that the lien avoidance provision of the Bankruptcy Reform Act of 1978, 11 U.S.C. Section 522(f)(2) was of questionable constitutionality in that it would retroactively destroy appellee's lien rights without compensation as required by the due process clause. Because of that constitutional problem, the Court instead held that it was not the intent of Congress for this particular provision of the Bankruptcy Act to apply retroactively.

In Louisville Joint Stock Land Bank v. Radford, 295 U.S. 554, 79 L.Ed. 1593 (1935), the Court voided an act aimed to benefit farmers by allowing them to regain their farms from mortgage holders. The Court stated that private property could not be taken even for wholly public use without just compensation. If the public interest required the taking of individual property, resort to eminent domain would be required so that the burden of the relief afforded in the public interest would be borne by the public at large. 295 U.S. at 601.

Retroactive elimination of state law claims of mobile home purchasers would be similarly defective as well as totally unwise.

(J) Truth-In-Lending is not comparable to the present controversy. The Truth-In-Lending statutes have been amended on several occasions, such as by Title VI of the Depository Institutions Deregulation and Monetary Control Act of 1980, to limit the liability of lenders in class actions and to provide defenses for reliance upon federal agency interpretations and for good faith errors. There may be some temptation to analogize the present controversy concerning interest rate preemption on mobile homes to Truth-In-Lending. The two are not comparable.

Truth-In-Lending is a disclosure statute. It does not preempt the freedom of the parties (consistent with state law) to agree to a rate of interest or finance charge, to set the term of a loan, to agree upon remedies for default, to provide collateral for the transaction and so on. The Preemption Act is different. It gave lenders the right to contract with borrowers concerning interest rates or finance charges regardless of state laws to the contrary. The Preemption Act went beyond what information would flow between the parties about the transaction they entered, but directly affected how much money could lawfully be taken from a borrower or purchaser by the seller or lender.

While limitations on the penalty for violating the disclosure requirements of TILA are justified, similar limitations on the borrowers' rights where the lender has violated state law to illegally take money from borrowers cannot be defended. Substantive provisions of state law are at stake and not just informed use of credit and standard terms as with TILA.

VI. ALTERNATIVES TO THE PROPOSED LEGISLATION

(A) Are borrowers protected by other laws? The question has been raised whether borrowers can be adequately protected against lender misconduct by the Fair Debt Collection Practices Act, 15 U.S.C.A. Section 1692(a), et seq. The answer is that this Act provides no protection for the violations of law at issue here. Moreover, this law places no restrictions on a company's collection of debts owed to it. 15 U.S.C.A. Section 1692(a)(6)(A). Kizer v. Finance America Credit Corp., 454 F.Supp. 937 (N.D. Miss. 1978). Under the form contracts used by the lenders which have been identified in litigation and absent application of state laws limiting finance charges, lenders are perfectly within their rights in demanding immediate acceleration of the debt and repossession of the mobile home when the debtor defaults. Under UCC Section 9-503, codified in Georgia at O.C.G.A. Section 11-9-503, no prior notice, much less 30 days' notice, is required prior to acceleration and self-help repossession[14]. Thus there is nothing unlawful in a lender's demand for immediate payment or possession of the home[15].

(B) Settlement of the lawsuits is an option. One of the options available to the lenders would be settlement of the cases where they have been found in violation of state law. So far, Citicorp has shown no interest whatsoever. BarclaysAmerican has shown some slight interest; however, the last letter to counsel for BarclaysAmerican, making an offer of compromise has gone unanswered for some six months. The settlement proposal to Citicorp was made after the district court had ruled against it and certified that action as a class action. After two years there has been no response, except that Citicorp continues to collect payments to which it is not entitled to under Georgia law and has continued to take homes, without any notice whatsoever.

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[14] Ford Motor Credit Co. v. Hunt, 241 Ga. 342, 245 S.E.2d 295 (1978). This is the law which applies elsewhere as well. 75 A.L.R.3d 1061, 29 A.L.R. Fed. 418, 69 Am.Jurs.2d, Secured Transactions, Section 598.

[15] Detailed discussion of this collateral issue should not be necessary. It suffices to say that Sections 1692c and d prohibit harassing or abusive collection efforts. Section 1692e prohibits misleading collection efforts, and Section 1692f prohibits unfair practices. None of these would apply to the problem of mobile home borrowers who are charged excessive interest rates under contracts which are contrary to the preemption requirements.

The primary feature of settlement proposals to the lenders has been a roll back of interest rates on existing contracts to a level that would have been legal under applicable state law and a proper refund of illegal finance charges already collected.

Under these proposals, the finance companies would still enjoy a return of some 14% over the 15 years of the contracts. This return compares most favorably with the contract interest rates on conventional home loans during the years in which the mobile home loans were made. For 1980 that national average was 12.3%, for 1981 - 14.1%, for 1982 - 14.5%, and for 1983 - 12.1%[16]. Furthermore, it is an excellent return based on current interest rates.

In the absence of evidence of willful violations by a lender, there is no reason to think that plaintiffs would not continue to accept such a solution or that it would be unacceptable to a reviewing court. In any event, it is a means by which a financing company could surrender the illegal portion of its profit in a transaction and drastically minimize its risk in a case.

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[16] 1985 Statistical Abstract of the U.S., 105th Edition, U.S. Department of Commerce, Bureau of the Census, Item No. 1329.

CONCLUSION

The 7,500 families whom we represent have no lobbyists. They cannot be expected to ever make political contributions to members of Congress. They only ask that the laws be allowed to operate as written. They are prepared to take the risk of success or failure in the courts of this land. Against an effort by a few to change the law to rescue the wrongdoers, they can only appeal to your good judgment and basic notions of fairness. Respectfully submitted, this 6th day of November, 1985.

DAVID E. HUDSON

Of Counsel:
HULL, TOWILL, NORMAN & BARRETT
POST OFFICE BOX 1564
AUGUSTA, GEORGIA 30913

JOHN B. LONG

Of Counsel:
NIXON, YOW, WALLER & CAPERS
1500 GEORGIA RAILROAD BUILDING
AUGUSTA, GEORGIA 30901

THOMAS W. TUCKER

Of Counsel:
DYE, MILLER, TUCKER & EVERITT
POST OFFICE BOX 2426
AUGUSTA, GEORIGA 30903

Senator Gorton. Thank you, Mr. Hudson, for a very clear and cogent statement.

Mr. Evans.

STATEMENT OF ROBERT L. EVANS, PRESIDENT, AMERICAN FINANCIAL SERVICES ASSOCIATION

Mr. Evans. Mr. Chairman, my name is Robert Evans. I am president of American Financial Services Association. Many of our members are engaged in mobile home or manufactured housing financing. I am also here today, representing the Consumer Bankers Association, which because of the people involved and the cross-membership that we have, we have worked jointly on this presentation as well as on some of the legislative end of it.

LEGISLATION WOULD CLEAR UP UNCERTAINTIES

Let me say at the outset, Mr. Chairman, that we strongly support this legislation for three reasons: Because it will clear up uncertainties in the law which have allowed the courts to make the decisions that they have today which has brought about this hearing.

Second, it will allow the creditors to cure the defects that exist in their form, not with respect to the law that you passed but with respect to laws which have been written by the courts in the last 2 years.

Finally, of course, going forward as you mentioned earlier, it's very, very important that the creditors be able to operate with the same certainty that was passed in 1980 with respect to truth-in-lending actions, and we understand that if this is done the creditors can correct what deficiencies there may be in these forms with respect to the court actions and court actions only, and in the future will have some reasonable standard to go by when it comes to determining damages where they have strayed from the law.

Let me just mention in this regard, Mr. Chairman—and I passed out for your benefit a summary of the Federal Reserve Board G–19 statistics. This was placed in issue by Mr. Fox and he cited statistics from August of this year and I thought it would be helpful for the committee to know just how successful this legislation was because at year end 1980 when there was close to $19 billion of mobile home credit outstanding, the finance companies had about 27 percent of this. Today, they have about 36 percent. At that time, the banks had 51 percent. Today, they have 37 percent, about the same amount.

But what really happened, the dramatic story in 1981 and 1982, is that the finance companies were able to extend nearly $4 billion in new mobile home financing—manufactured home financing—while the other creditors were on a net liquidation. In other words, the entire mobile home new financing during that 2-year period, the critical period with a 21-percent prime rate, of recession and unemployment, this law that you passed, the preemption provisions, enabled many, many consumers to buy homes and to live in them.

I might add with respect to the high interest rates that have been averted to by Mr. Hudson that on one case which is a subject of appeal today, the *Quiller* case, the monthly payment was $263. If it had been at 14.5 percent which they claim would have been the proper amount under State law, the monthly payment would have been about $213. For $50 a month or $600 a year the Quillers were able to buy a home and live in it. They presumably met the qualifications and the credit standards of the creditors at that point.

The important thing is that many, many people, by your action, were enabled to do so. What we're asking today is not that the provisions of that law be repealed, but that the actions taken by the courts at the suggestion of Mr. Hudson and others here be critically scrutinized to see if they are advancing the purposes of this act.

Let's take a brief look at the issue because I can't—and my experience runs now about 25 years in the drafting of consumer contracts and testifying before this Congress on consumer credit and truth-in-lending matters—for the life of me understand the rationale behind both the reasoning of the court and the various arguments placed before it.

Very simply, the act does not require that a provision be placed in the contract, which Mr. Hudson has admitted, putting the debtor on notice that he has a right to receive a notice to cure. What is required is that when the creditor takes action—and I use that term advisedly because that comes out of the regulation—to repossess or foreclose or accelerate, he must first, before taking that action send that notice. And I would also place on the record the statement today, Mr. Chairman, that no action has yet been taken to foreclose, despite what suggestions have been made here, on any mobile home contract that we're aware of by any of our members where that notice has not been given. And I think that's very important to bear in mind.

What we are really talking about here is whether under some theory there is a need to conform other contractual language to rights that borrowers have under Federal and State law. This is a very novel doctrine and never before, to my knowledge, have all the rights of borrowers been required to be put in contracts that literally have page upon page upon page of consumer rights which cannot be waived by the consumer, cannot be contracted away by the creditor, under this theory that the agreement must in some fashion explain away all potential conflicts.

Let's take one that I'm sure you're familiar with, the Uniform Commercial Code, of course, places certain restrictions upon what the creditor can do upon repossession and resale. And indeed, if the creditor wants to seek a deficiency balance, he must give certain notice to the consumer similar to this.

There has never been a requirement that I know of that the debtor outline all of the notice provisions of the Uniform Commercial Code in his contract. Yet the court in this case says that where the debtor or the creditor has the right to accelerate the contract it must at once explain that this is in potential conflict with some other right that is given to the consumer by law and relates to an action required by the law of the creditor.

IMPOSSIBLE POSITION OF THE LENDER

Let me just suggest that underlying this is an impossible position that the court has placed—and I think this will explain why the court did it. An installment contract to be enforceable must have an acceleration clause. There would be no mutuality of contract without it. Why? The right that the debtor has under the contract is to defer payment, the right that he contracts for. He has a concomitant duty to make that payment on time. Otherwise, there is no contract at all. If he has no duty to make that payment on time, there really is no mutuality.

The only way that that duty can be enforced, Mr. Chairman—I'm sure you're familiar with this—is that the creditor have the right to accelerate the contract. Indeed, it's absolutely ridiculous to say, as the court has, that you don't have to display this in your your contract—the 30-day notice requirement—but if you put in the acceleration clause which is a vital necessity to form a contract in the first place you must do something about it.

Why did the court do this? It was not a gratuitous thing. They did not want to place themselves at odds with the Federal Home Loan Bank Board which had made no such requirement. The Board has not required—and by a letter from its own attorney said, you do not have to put this in the contract. And if the court went along with that, it would have had to have held that the creditors had no duty under any circumstance to put it in and there would be no case here today.

But to get around this they said:

> But if you exercise your right to enforce the contract, which is apparently in conflict with this, you lose the day and you haven't done the job.

Well, that's just fatuous and it's not the law of the land and it never has been.

Why didn't the court read the two items in what we would call paramateria? In other words, the general right to enforce the contract being limited by the specific right under law or the duty placed on the creditor to give notice before repossession—very simple, the type of thing that most courts would have done in this land in the past up until this kind of novel theory has been thrust upon them.

This and only this, Mr. Chairman, is what we are concerned with. It's a theory which the court has picked up and by the narrowest of margins—in one case 6 to 5 en banc—has supported. In another case, under very similar language, it voted against this proposition 8 to 3 and I will give you those two provisions here in a minute just to see for yourself what you think the issue was decided on.

Now the violations in this case stem from the court-imposed duty, as I said before, and not the law itself.

Let's take a look at the other exhibit which I gave you which, if you will, Mr. Chairman, indulge me here, lays out the offending clause in about 6 or 7 cases. As you can see, there was a good faith effort on behalf of every lender here to actually qualify his right to accelerate. In one case, he said, "subject to any notice to right to cure," and that failed in the court's view.

In the next case it said, "subject to buyer's right of notice and right to cure," and that failed in the court's view. In the next case, it said, "no action to repossess will take place without giving 30 days notice of right to cure," and that passed 8 to 3.

What we're talking about here, Mr. Chairman, is a very, very complex contract and if every one of these that are in the appendix and are the issue of this hearing here are carefully examined you will see one thing and one thing only—a determined, good faith, substantial effort to comply by these attorneys who drafted these contracts. They are responsible for literally hundreds of contracts that support billions of dollars of consumer credit around the land.

The fact of the matter is, no attorney, no company can afford to do anything but make the very best effort it can to comply with truth-in-lending, State disclosure laws, Federal Trade Commission rights regarding holder in due course, and anything else that may occur under State or Federal law which is deemed necessary to be put in this contract.

Very little of the actual contract today is actually needed to perform the contractual relationship. The rest of it is disclosure, rights, and duties placed on them by law.

So to interpolate, in this thing, one more duty on the creditor where he's made an effort which is very difficult to distinguish from the series of paradigms which Mr. Hudson offers here and I think I could easily challenge some of those in the appendix that he says really comply. I see a bank here in his own hometown that in one part of the contract says, "on default you may"—this is the borrower saying to the bank—"you may at your option and without notice declare the unpaid principal balance immediately due and payable." An utter violation of what the courts have held. But later on, if you read down further on, it does qualify this and says, "on the other hand, if this is a mobile home contract you have a right to notice."

Well, the judge in one of the cases, the *Grant* case, and the three-judge panel said that kind of disclosure is inadequate. She was overruled later on by the full panel, but she is the heading of the distinct minority here which is holding this very strict construction on this thing and I would say here's one that's offered up as being a model of a disclosure and yet it has all the deficiencies which at least three or four judges felt shouldn't have been permissible.

So I don't think Mr. Hudson's examples really are dispositive of the issue. They simply show that this is a very difficult thing to comply with.

Well, I repeat—and my time is up, Mr. Chairman— that I think the key other issue here for us to consider is a basic tenet of our judicial system, and that is we do not award substantial damages where there is no injury. The damage potential in Georgia in these cases is grotesque. It really is. We're talking about a $16,000 balance on a contract and the possibility of a $92,000 penalty placed on the credit, all out of line with what is at best a conjectural arguable provision in the contract.

We don't think that's what Congress intended. It clearly showed when it amended the Truth-in-Lending Act that it wanted to give the courts more flexibility to look into the attempt of substantial compliance.

With that, Mr. Chairman, I thank you very much and I would be glad to answer any questions you may have.

[The complete prepared statement and exhibits follow:]

STATEMENT OF

ROBERT B. EVANS

Mr. Chairman, Members of the Committee, I am Robert B. Evans, President of the American Financial Services Association (AFSA), appearing here today on behalf of the AFSA and the Consumer Bankers Association (CBA) and those finance companies which finance manufactured housing.[1]

At issue today is a proposed amendment to the Depository Institutions Deregulation and Monetary Control Act of 1980 ("DIDMCA") which, in effect, restates the public policy behind that landmark legislation's federal preemption of state usury ceilings on manufactured housing.

Today I will briefly review the law as passed, its implementing regulations and the circumstances which necessitate these amendments.

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[1] AFSA is a national trade association serving consumer finance companies, retailers, and diversified financial services companies engaged in the extension of consumer credit throughout the United States. AFSA member companies hold over $9.4 billion in manufactured housing loans as of July 1985, much of which is financed under the regulatory framework at issue today. (Source: Federal Reserve Board.)

CBA is the national trade association of the retail banking industry. CBA members now hold over 70% of all consumer credit outstanding held by commercial banks and over 80% of the consumer deposit accounts held by commercial banks. Federally insured depository institutions hold more than $15 billion in manufactured housing loans as of April 1985. (Source: Federal Reserve Board.)

THE LEGISLATIVE HISTORY

First, let us return to the late 1970's when -- in the words of this Committee -- "mortgage credit crunches" occurred. Lenders' costs of funds had risen above the usury limits in most states and this Committee - and ultimately the entire Congress - preempted state usury limitations on mortgage interest rates. As the Senate Committee report noted at that time, "this limited modification in state usury laws will enhance the stability and viability of our Nation's financial system and is needed to facilitate a national housing policy and the functioning of a national secondary market in mortgage lending."

As Senator Proxmire said in his opening statement accompanying the Senate bill which included the eventual Preemption Act:

> "Usury limits have become economically counter-productive, if they ever had any purpose. Most usury limits were established during the depression and bear no reasonable relationship to today's circumstances. Borrowers are hurt, not helped, by unrealistic lending limits and also homebuilding, small business, or agricultural purposes, if they are restricted to rates below the market rate. The homebuilding industry is particularly disadvantaged by usury limits...the impact will be most severely felt by younger, lower-income prospective homeowners."

Recognizing that manufactured housing is one of the few forms of home ownership available to lower income families, Congress also preempted usury limitations on manufactured housing.

The federal preemption for manufactured housing was an eleventh hour addition to the banking bill. During the final stages of the five-month long Conference Committee debates on the banking bill, Congress realized that additional language would be necessary to extend the benefit of federal rate preemption to manufactured housing. Unlike conventional housing mortgages, to which general usury laws apply, loans or credit sales financing manufactured housing are generally subject to a scheme of motor vehicle sales finance and Uniform Commercial Code provisions in the various states, which contain strict remedial provisions more appropriate to the financing of personal property. As part of the preemption of state law limiting interest charges on manufactured housing finance, Congress required that borrowers be afforded certain protections analogous to those customarily enjoyed by borrowers who enter into mortgages secured by real property. To quote the House Conference Report:

> "Manufactured home financing is covered by the mortgage usury preemption as long as such financing complies with consumer protection provisions specified in regulations of the FHLBB. The conferees intend that in developing these regulations the Bank Board should look for guidance to regulations, handbooks and circulars of the FHA and VA regarding mobile home lending, the provisions of the standard conventional mortgage forms of FHLMC and FNMA, and the provisions of the Uniform Consumer Credit Code."

The Congressional charge to the Federal Home Loan Bank Board (Bank Board) was specific. The Act required the Bank Board to promulgate regulations governing

- consumer protections with respect to balloon payments, prepayment penalties, late charges and deferral fees;

- 30-day notice prior to instituting an action leading to repossession and foreclosure, except in the case of abandonment or other extreme circumstances;
- the use of actuarial refunding; and
- any additional provisions the Bank Board might prescribe after finding that additional protections are required.

This was not an open-ended mandate, as the Conference Committee Report language regarding the manufactured housing preemption was specific, saying:

> "the conferees intend that before exercising this authority, the Board should carefully, but expeditiously, study the implications of each additional requirement, including consideration of the economic impact on creditors and consumers of each requirement."

THE IMPLEMENTING REGULATIONS

Consonant with this Congressional direction, the Bank Board promulgated its regulations. Those regulations require specific contractual provisions dealing with prepayment, balloon payment terms, late charges, and deferral fees. On the other hand, the regulations do not require any reference to the 30-day notice provision in the contract itself, but do require that the notice be given except in cases of abandonment or other extreme circumstances and not more often than twice in a twelve-month period.

In reliance on this regulatory scheme, the manufactured housing finance industry immediately began to carry out the purpose of the Act - increasing the availability of credit for consumers wishing to purchase their homes.

The Bank Board has issued opinions interpreting the Act and regulation. These opinions have dealt with the notice of the right to prepay without penalty and the notice of default and right to cure.

In 1982, the Bank Board was asked specifically whether manufactured housing contracts must recite the purchaser's right to the 30-day notice as a condition to preemption of state rate limitation laws. The Bank Board's General Counsel responded:

> This responds to your letter of October 7 requesting an interpretation of Board regulation section 590.4(h) (12 C.F.R. § 590.4(h) (1982)), which contains consumer protection requirements relating to the financing of manufactured homes and preempts state usury laws if those requirements are met. The sole issue presented by your letter is whether section 590.4(h) requires that a manufactured home credit agreement recite the purchaser's right to thirty days' notice as a condition of preemption of state usury laws.
>
> Paragraph (h)(1) of section 590.4 states, in relevant part:
>
> > Except in the case of abandonment or other extreme circumstances, no action to repossess or foreclose, or to accelerate payment of the obligation, may be taken against the debtor until 30 days after the creditor sends the debtor a notice of default in the form set forth in subparagraph (h)(2) of this section.
>
> This requirement refers only to the act of giving notice; neither paragraph (h) nor the Congressional legislation that it implements (Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. No. 96-221, § 501, 94 Stat. 161-63 (1980)) expressly requires that a covered credit agreement recite the purchaser-borrower's right to notice. Furthermore, there are no legislative or

> regulatory history materials suggesting that either Congress or the Board intended an implicit requirement of a contractual notice provision. If a contractual notice provision requirement had been intended, it is reasonable to assume that the Board would have expressly so provided, as it did in paragraphs (d) (prepayment without penalty), (e) (terms of balloon payments), (f) (late charges), and (g) (agreements for deferral of fees) of section 590.4. In light of these considerations, it is the view of this Office that section 590.4(h) does not require that the terms of a manufactured home credit sale agreement recite the purchaser's right to thirty days' notice of acceleration or repossession.

Why then is this Committee revisiting the issue?

When Sec. 501(c) was originally enacted in 1980, creditors desiring to extend credit pursuant to its provisions were obliged to develop form contracts that would (a) confer upon the creditor whatever contractual rights were required in order to adequately protect the creditor's legal position; (b) satisfy the requirements of state law to the extent that it was not preempted by Sec. 501(c) (or other provisions of federal law); and (c) satisfy the consumer protection requirements of Sec. 501(c) and the regulations of the Bank Board promulgated thereunder.

Developing a form that would satisfy all three of the aforedescribed objectives was obviously a difficult and complex undertaking and entailed a risk that the form produced would fail to achieve full technical compliance with the applicable consumer protection requirements. Yet under Sec. 501(c) as it currently exists, the potential consequences of such non-compliance, however inconsequential to the debtor, could be a loss of federal preemption and, as a concomitant thereof, the possible imposition upon the creditor, under state law, of severe penalties, forfeitures and liabilities. The creditors at risk include institutions the accounts of which are insured by the Federal Deposit Insurance Corporation and the Federal Savings and Loan Insurance Corporation, and hence such state law penalties, forfeitures and liabilities present at least a potential threat to the federal insurance funds.

Illustrative of the problem are seven class actions brought against five different creditors involving a number of similar issues.[2] These lawsuits do not involve customers who have actually been damaged by conduct on the part of creditors contrary to the Act and regulations. Rather, these cases involve hyper-technical issues similar to those creditors faced during the heyday of Truth-in-Lending in the 1970's. The cases, therefore, do not represent cases where creditors have acted contrary to the intent and substance of DIDMCA.

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[2] Quiller et al v. Barclays American/Credit, Inc., 727 F.2d 1067 (11th Cir. 1984), 764 F.2d 1404 (11th Cir. 1985) (en banc); Grant et al v. GECC., 727 F.2d 1073 (11th Cir. 1984), __F.2d__, Case no. 83-8456 (11th Cir. July 8, 1985) (en banc); Moyer et al v. Citicorp Homeowners, Inc. et al, Case No. 84-8166, Eleventh Circuit Court of Appeals (on interlocutory appeal); Bass et al v. Barclays American/Financial, Inc., Case No. 85 CVS 811 in the General Court of Justice, Superior Court Division of North Carolina; Crow v. Citicorp Acceptance Co., Inc., Case No. 85 CVS 2805 in the General Court of Justice, Superior Court Division of North Carolina (on interlocutory appeal to the North Carolina Court of Appeals); Fort Wayne Mortgage Company v. Wood, Case No. 85-8297, Eleventh Circuit Court of Appeals (on interlocutory appeal). Southern Guaranty Corporation v. Doyle et al, Case No. 85-8187, 11th Cir. (on interlocutory appeal).

A principal claim advanced by plaintiffs in the litigation concerns the disclosure in the contract of the borrower's right to prepay without penalty. Under the Bank Board's regulations such notice must be "... disclosed in the loan contract in type larger than that used for the body of the document."

Creditors have complied with this requirement by printing the disclosure in bold face type, type with initial capital letters, type larger than the surrounding type; as methods calculated to make the disclosure prominent and conspicuous and inform the borrower that the right to prepay without penalty exists. Yet the plaintiffs argue that compliance can be measured only by the point size of the type and assert that if the disclosure is not made in a type size larger than other type in the body of the contract - the federal rate preemption is lost.

Another argument pressed in all of the cases is that the contract must disclose the right of the consumer to be sent a 30-day notice by the creditor informing the debtor of his or her right to cure. This claim is made despite the absence of any requirement in the statute or the Bank Board regulations requiring such a disclosure, and despite repeated assertions of the Bank Board in its opinions and amicus briefs filed in these cases, that no such disclosure is required. Even if the complete Title V of DIDMCA and accompanying regulations were appended to each transaction, the public policy purpose is not actually accomplished until the notice required by the Act is sent to the debtor.

A further claim advanced in the cases is that acceleration provisions found in the contracts are inconsistent with the consumer protection provisions of the DIDMCA, and that usury preemption is unavailable where the contract contains such an "inconsistency." Acceleration clauses - that term of a contract which renders the entire obligation due upon default by the debtor - are an inherent part of all installment lending. Without such an acceleration clause, a creditor would be forced to sue for each scheduled installment as it became due.

The Act and regulations recognize this and permit acceleration. Indeed, the Act expressly authorizes acceleration without notice in cases of abandonment or other extreme circumstances, and the regulations do not require the notice to be given more than twice in any twelve-month period. Thus, contractual language which authorizes acceleration cannot be contrary to the Act or the regulations.

All the claims raised in the cases graphically illustrates that what was intended by Congress to facilitate provision of financing for manufactured housing threatens to create the same Procrustean bed for creditors that existed under the Truth-In-Lending Act before its simplification by this Committee.

THE NEED FOR CORRECTIVE LEGISLATION

Congress enacted § 501(c) of DIDMCA to preempt state rate limitations on the financing of manufactured housing and to require creditors who furnish such financing to provide appropriate consumer protections for each borrower. Congress intended to encourage the stability and viability of the housing industry, to foster consistency in national housing policy, and to aid potential homebuyers of manufactured housing. Congress entrusted the implementation of these goals to the Bank Board. Pursuant to its Congressional mandate, the Bank Board has promulgated consumer protection regulations in the area of manufactured housing and has issued staff opinion letters interpreting both DIDMCA and its regulations to aid creditors in compliance.

Since enactment of DIDMCA, billions of dollars of credit has been extended for new manufactured housing throughout the country in reliance on § 501. However, recent court decisions which have paid lip service to but otherwise disregarded the Bank Board's interpretive opinions regarding compliance with DIDMCA and have created an environment under which no creditor can be sure of his compliance with federal law.

In effect, the courts are now retroactively "second guessing" the Bank Board and manufactured housing lenders. Under these circumstances, no creditor can be assured that its forms qualify for the federal law protection of § 501. Actually, despite the absence of any actual harm to purchasers of manufactured housing arising from the types of non-compliance which have been alledged, the courts have created a potential lawsuit on every manufactured home contract entered into in reliance on § 501 since 1980 and put every future contract in jeopardy. An avalanche of litigation is forseeable comparable to that experienced under the Truth-in-Lending Act ("TILA") prior to its reform by DIDMCA. Indeed, further litigation has now applied vague new standards of contractual interpretation to mortgages insured under the National Housing Act potentially invalidating even the nationally uniform FHA and VA financing forms (See Doyle v. Southern Guaranty Corporation, No. CV 184-180 (S.D. Ga. Jan. 15, 1985)).

The creditors who in good faith have attempted to comply with the requirements set by the Bank Board in designing their standardized contracts, and who were dealing with consumers who expected the transaction to come under federal law, now face massive exposure to multi-state litigation, conflicting judicial interpretations and could face draconian penalties imposed for violation of state law.

Even if the position of the creditors in these cases is ultimately vindicated by the judiciary, the uncertainty generated by such litigation may itself have created substantial harm to both creditors and consumers. Aside from direct costs associated with defending the cases, the uncertainty has inhibited creditors from entering or remaining in the market for manufactured housing finance; has impaired their ability to raise or increased the cost to creditors of funds used for manufactured housing finance and thus has increased the cost of credit to consumers; and has inhibited creditors from voluntarily rectifying any inadvertent failures to comply with the Bank Board's regulations - despite the fact that rectifying such failures would clearly advance the policy goals of the Act.

THE RATIONALE FOR THE CORRECTIVE AMENDMENTS

Unlike the TILA, the Equal Credit Opportunity Act ("ECOA"), and the Alternative Mortgage Transactions Parity Act of 1982, DIDMCA did not include with its manufactured housing lending consumer protection provisions any specification of remedies available in the event of non-compliance. Nor did DIDMCA provide language comparable to those statutes permitting a creditor who is in substantial compliance to cure technical errors or defects.

Accordingly, even if a creditor enters into a contract that the creditor believes complies fully with § 501 and the Bank Board's implementing regulations, and the Bank Board concurs that the contract complies, the creditor runs the risk that a reviewing court may rule years later that the contract does not meet the court's interpretation of what was required. If non-compliance is found, instead of some appropriate relief to give to the borrower whatever rights and benefits the Act provides, all of the creditor's contracts may be deemed usurious under state law, triggering forfeitures and other penalties completely out of proportion to the defect in the contract and economic harm, if any, to the borrower.

The consequences to a creditor could be devastating. For example, in the Quiller case (supra) the creditor could lose the right to collect finance charges on the contract and could have to pay a penalty of twice the finance charges. Regarding the Quiller's contract alone, the creditor would forfeit $31,417.40 in finance charges and pay a penalty of $62,834.80 for a total loss of $94,252.20. The Quillers purchased a mobile home costing $19,754.80.

A creditor who falls out of grace in other jurisdictions may face even more severe penalties, including a forfeiture of the principal.

Left unchanged, the current law, as interpreted by the courts, has made extending manufactured housing credit a high-stakes gamble in which the rules change from state to state and court to court.

THE EFFECT OF THE CORRECTIVE AMENDMENTS

The amendments we support today do three things. First, they establish, going forward, the certainty required by creditors for contractual validity. Second, regarding contracts entered into pursuant to DIDMCA and prior to the effective date of these amendments, they provide a mechanism under which a creditor who is in substantial compliance with the Act and regulations, such as those who are parties to the litigation cited previously, may cure non-compliance by providing to the debtor all rights, benefits, and protections contemplated by the Act and the regulations. Third, instead of the radical remedy of loss of rate preemption, the amendment substitutes the remedial provisions similar to those found in TILA, ECOA, and other credit related statutes.

No creditor would, however, be entitled to avoid payment of damages to a debtor who has suffered actual damages from not having been provided a 30-day notice prior to repossession or foreclosure. Thus, the substantive rights provided to the debtor under the statute must be given full force and effect before these amendments would apply. This carries out the intent of the 1980 Act and will assure the continued availability of credit for manufactured homes.

By providing uniform and clearly articulated standards for what constitutes a lawful contract under § 501, Congress will eliminate the jeopardy of retroactive judicial interpretations and eliminate the paralyzing uncertainty hanging over lenders and consumers who wish to finance manufactured homes.

SUMMARY

In sum, Congress enacted the DIDMCA to assure the availability of mortgage credit for both site-built and manufactured housing in states whose interest rate limits were fixed in pre-inflationary times. Without such preemption and these amendments, consumers in some states would continue to be denied financing for manufactured housing, and consumers in search of affordable housing in the future will be truly injured by being unable to purchase manufactured homes. We urge favorable consideration of these amendments and thank the Committee for its consideration of this vital issue.

AFSA/CBA EXHIBIT A

EXTRACTS OF NOTICE PROVISIONS FROM CONTRACTS APPENDED TO PLAINTIFF'S TESTIMONY

Company A

"Upon such delinquency, Holder may, subject to any notice of right to cure, accelerate the unpaid balance . . ."

Company B

"Seller may, subject to Buyer's Right of Notice and Right to Cure, accelerate the unpaid balance of the Total of Payments . . ."

Company C

"No action to repossess or foreclose, or to accelerate payment of the entire outstanding balance of the obligation, may be taken against the debtor until 30-days after the creditor sends the debtor a notice of default . . ."

Company D

"If I default you may send me a notice giving me 30-days after the notice is sent to eliminate the default but this notice does not have to be sent if within the one-year period before the default occurred I previously defaulted and you sent me a notice on two separate occasions. If I do not eliminate the default . . . the full amount I owe . . . If you are not required to send me a 30-day notice, then you can exercise these rights as soon as I am in default . . ."

Company E

"I agree that if I default under this agreement, that you will have the right, upon 30-days prior written notice, to declare all remaining amounts due under this agreement immediately due and payable to you."

Company F

"On default, you may at your option and without notice declare the unpaid principal balance . . . immediately due and payable . . . ADDITIONAL TERMS WHICH APPLY ONLY WHEN THIS NOTE IS SECURED BY A MOBILE HOME . . . On default, I am entitled to a Notice of Default and I will have the right to cure said default. However, I will not be entitled to a Notice of Default if the mobile home has been abandoned. I shall not be entitled to more than two Notices of Default in any one-year period. On default interest will accrue at the rate of 16% per annum."

Company G

"If Buyer defaults...Seller must give Buyer a notice giving the Buyer 30-days after the notice is sent in which to cure the default. Buyer, however, is not entitled to such notice of default more than twice in any one-year period. After the 30-day period has elapsed and the Buyer has not cured his default, or immediately upon Buyer's default if Buyer has already received two notices of default . . . shall become due and payable at the option of the Secured Party without notice or demand upon Buyer, except to the extent that the notice and cure provision, section 5.111 of the South Carolina Consumer Protection Code is applicable, and thereupon Secured Party shall have all the remedies of a Secured Party under the South Carolina Uniform Commercial Code and the South Carolina Consumer Protection Code, including the right, as provided in section 5.112 of the South Carolina Consumer Protection Code, without demand or notice, to take possession of any and all property, and upon such written notice as is required by law, to sell the property . . ."

AFSA/CBA EXHIBIT B

MANUFACTURED HOUSING CREDIT*

(1980-1982)

By Institution	Year-End 1980	Year-End 1981	Year-End 1982	Change	Percent Change
Commercial Bank	10,371	10,187	9,605	- 766	- 7.4%
Finance Company	5,209	6,442	9,159	3,950	75.8%
Savings & Loan	2,737	2,788	3,143	406	14.0%
Credit Union	469	489	503	34	7.2%
TOTAL	18,785	19,906	22,410	3,625	19.2%

(*Expressed in millions of dollars)

Finance companies' marketshare has grown since 1980. The non-seasonally adjusted marketshare has grown from 27.7% in 1980 and 32.4% in 1981 to a current August, 1985 share of 35% of total manufactured housing credit extensions.

In contrast, commercial banks' marketshare has dropped from 55.2% in 1980 to 51.2% in 1981 and only 37% in August, 1985.

The source for this data is Federal Reserve Board Statistical Releases.

FEDERAL RESERVE statistical release

FILE COPY

G.19

For immediate release
October 9, 1985

CONSUMER INSTALLMENT CREDIT

Consumer installment credit outstanding rose $6.3 billion in August, seasonally adjusted, about unchanged from the $6.2 billion July increase. The annual rate of growth in August was 15.0 percent, the same as in July but below the second quarter pace of almost 19 percent.

Automobile credit advanced $2.5 billion, seasonally adjusted, in August after rising $2.4 billion in July. Revolving credit expanded by over $0.9 billion in August, a bit more than in the preceding month. The $2.9 billion increase in "other" plus mobile home credit in August was slightly below the $3.0 billion gain a month earlier.

	Net Change in Amount Outstanding			Annual Rate of Growth (percent)		
FLOWS OF CREDIT	1985			1985		
Millions of dollars (seasonally adjusted)	Aug.	July	June	Aug.	July	June
Total	6,312	6,247	5,227	15.0	15.0	12.7
Automobile	2,486	2,365	2,686	15.4	14.8	17.0
Revolving	936	856	-73	10.5	9.6	-0.8
Mobile home	206	324	196	9.7	15.4	9.4
Other	2,684	2,702	2,418	18.0	18.4	16.7

TERMS OF CREDIT	1985				1984
(not seasonally adjusted)	Aug.	July	June	May	Aug.
Interest rates 2/					
Commercial banks 3/					
48-mo. new-car loan	12.72	n.a.	n.a.	13.16	14.08
24-mo. personal loan	15.84	n.a.	n.a.	16.09	16.75
120-mo. mobile home loan	14.72	n.a.	n.a.	15.03	15.72
Credit card plan	18.62	n.a.	n.a.	18.74	18.81
Auto finance companies 4/					
New-car loan	10.87	12.46	12.06	11.87	15.01
Used-car loan	17.57	17.49	17.77	17.84	17.99
Other terms at auto finance companies 4/					
Maturity (months)					
New-car loan	51.1	51.7	51.3	50.9	49.2
Used-car loan	41.6	41.5	41.3	41.4	39.8
Loan-to-value ratio (%)					
New-car loan	91	91	91	91	88
Used-car loan	95	95	94	94	93
Amount financed ($)					
New-car loan	10,422	10,355	9,965	9,775	9,409
Used-car loan	6,139	6,146	6,116	6,117	5,753

CONSUMER INSTALLMENT CREDIT BY HOLDER AND TYPE
(Millions of dollars except as noted)

Installment credit holder and type	Net change during Aug. 1985 S.A.	July 1985 S.A.	Aug. 1985 N.S.A.	Outstanding at end of Aug. 1985 S.A.	Aug. 1985 N.S.A.	Aug. 1984 N.S.A.	Change from end of Aug. 1984 amount	percent
Total	6,312	6,247	9,149	512,076	512,983	430,795	82,188	19.1
By major holder								
Commercial banks	1,764	1,824	3,477	235,661	236,390	199,654	36,736	18.4
Finance companies 1/	2,371	1,629	2,393	110,183	110,378	94,070	16,308	17.3
Credit unions	1,065	1,149	1,665	75,829	76,279	62,679	13,600	21.7
Retailers 5/	-99	112	82	38,249	37,481	35,359	2,122	6.0
Savings and loans	969	1,338	1,195	38,511	38,496	26,922	11,574	43.0
Gasoline companies	103	21	151	4,159	4,467	4,452	15	0.3
Mutual savings banks	139	174	186	9,484	9,492	7,659	1,833	23.9
By major credit type								
Automobile	2,486	2,365	3,372	196,754	198,050	165,177	32,873	19.9
Commercial banks	136	1,025	813	96,038	96,576	81,786	14,790	18.1
Finance companies	1,844	790	1,763	64,451	64,991	53,412	11,579	21.7
Credit unions	506	550	796	36,265	36,483	29,979	6,504	21.7
Revolving	936	856	2,045	108,329	107,584	88,202	19,382	22.0
Commercial banks	968	733	1,856	70,256	69,949	52,313	17,636	33.7
Retailers 5/	-135	102	38	33,914	33,168	31,437	1,731	5.5
Gasoline companies	103	21	151	4,159	4,467	4,452	15	0.3
Mobile home	206	324	288	25,794	25,833	24,947	886	3.6
Commercial banks	3	-22	57	9,460	9,550	9,711	-161	-1.7
Finance companies	-13	74	17	9,162	9,163	9,992	-829	-8.3
Savings and loans	204	261	196	6,370	6,313	4,581	1,732	37.8
Credit unions	12	11	18	802	807	663	144	21.7
Other	2,684	2,702	3,444	181,199	181,516	152,469	29,047	19.1
Commercial banks	657	88	751	59,907	60,315	55,844	4,471	8.0
Finance companies 1/	540	765	613	36,570	36,224	30,666	5,558	18.1
Credit unions	547	588	851	38,762	38,989	32,037	6,952	21.7
Retailers 5/	36	10	44	4,335	4,313	3,922	391	9.2
Savings and loans	765	1,077	999	32,141	32,183	22,341	9,842	44.1
Mutual savings banks	139	174	186	9,484	9,492	7,659	1,833	23.9

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1. Loans secured by real estate at finance companies —excluded from the above series— for August 1985 are estimated at $28.4 billion, seasonally adjusted, and $29.2 billion not seasonally adjusted.
2. Interest rates are annual percentage rates as specified by Regulation Z.
3. Commercial bank data are simple unweighted averages of each bank's "most common" rate charged during the first calendar week of the month.
4. Finance company data from the subsidiaries of the three major U.S. automobile manufacturers are volume-weighted averages covering all loans of each type purchased during the month.
5. Includes auto dealers and excludes 30-day charge credit held by travel and entertainment companies.

n.a.= Data not available. S.A.= Seasonally adjusted. N.S.A.= Not seasonally adjusted.

NOTE: The Board's series on amounts of credit covers most short- and intermediate-term credit extended to individuals through regular business channels, usually to finance the purchase of consumer goods and services or to refinance debts incurred for such purposes, and scheduled to be repaid (or with the option of repayment) in two or more installments.

The G.19 Statistical Release is issued about the middle of each month. The exact date and time of each monthly release will be announced, when the information is available, on (202) 452-3206.

EXHIBIT C

RETAIL INSTALMENT CONTRACT

Customer (which also means "debtor" and includes all purchasers jointly and severally) has today purchased from Secured Party, hereinafter called "Seller", on a deferred payment price basis, under the terms and provisions on the face and back of this Security Agreement, hereinafter called "contract", and accepted in its present condition, the following property

ACCOUNT NO. ____

DATE 6-27-81

NEW OR USED	YEAR AND MAKE OF MOBILE HOME	SERIES NAME	LENGTH - WIDTH, COLOR	IDENTIFICATION NO (Serial No.)
New	1981 Liberty	Liberty	56'X24' Beige/ Black	~~0211806284~~ 021180628411

EQUIPMENT INCLUDED

☐ Air Cond. Unit(s) ☒ Range ☒ Refrigerator ☐ Freezer ☐ Washer AC ☐ Dryer

☒ Furniture (As per Mfg. floor plan) ☐ Awnings ☐ Skirting ☐ Acc. Shed ☐ Other ____

PROPERTY TO BE KEPT AT	COUNTY OF Aiken	If at other than Customer's address, enter location →	NUMBER AND STREET, CITY, STATE AND ZIP CODE Same
CUSTOMER Name	Arthur Quiller and Lillie Mae Quiller	CREDITOR (SELLER) Name	Vintage Enterprises Inc. DBA/ Colonial Mobile Homes Inc.
Number and Street	Rt. # 3 Box 476	Number and Street	1951 Gordon Hwy.
City, State and Zip Code	North Augusta, South Carolina ZIP CODE 29841	City, State and Zip Code	Augusta, Georgia ZIP CODE
		CREDITOR (ASSIGNEE)	BARCLAYSAMERICAN/CREDIT, INC. (SEE ASSIGNMENT BELOW)

INSURANCE AGAINST LIABILITY FOR BODILY INJURY OR PROPERTY DAMAGE TO OTHERS IS NOT INCLUDED IN THIS TRANSACTION.

1. Cash Price (including sales tax) .... $ 19754.80
2. Cash Downpayment .... $ 4193.80
   Trade-in: Year & Make N/A
   Allowance: Gross $____ Amt. Owing $____ Net ... $ .00
   Amount owing on trade-in to be paid by ☐ Seller ☐ Customer
   Total Downpayment .... $ 4193.80
3. Unpaid Balance of Cash Price [Item (1) minus Item (2)] .... $ 15561.00
4. Fees Disbursed By Seller For Customer:
   a. Title Fee $____ b. License Fee $____ [Sum of items (4a) and (4b)] ... $ .00
5. Unpaid Balance of Cash Price Plus Fees Disbursed by Seller: [Sum of items (3) and (4)] .... (Proceeds to Seller) → $ 15561.00
6. Other Charges:
   a. Recording Fee Title & UCC1 .... $ 7.00
   b. Documentary Stamps .... $ .00
   c. Other Fees (Describe) ____ $ .00
   d. Credit Life Insurance Premium .... $ .00
   e. Accident & Health Insurance Premium .... $ .00
   f. Other Ins. Premium (Describe) PE ____ $ 432.00
   g. Physical Damage Insurance Premium for the following coverages and for a term of ____ months: .... $ ____
      ☐ Comprehensive Coverage ☐ Secured Interest Protection
      ☐ Comprehensive Personal Liability ☐ Natural Disaster Protection
      ☐ Personal Effects ☐ Other (Describe) ____
   Total Other Charges [Sum of items (6a), (6b), (6c), (6d), (6e), (6f) and (6g)] .... $ 439.00
7. Unpaid Balance/Amount Financed [Sum of items (5) and (6)] .... $ 16000.00
8. **FINANCE CHARGE** .... $ 31417.40
   ANNUAL PERCENTAGE RATE: 18.50 %
9. Total of Payments [Sum of items (7) and (8)] .... $ 47417.40
10. Deferred Payment Price [Sum of items (1), (4), (6) and (8)] .... $ 51611.20

DATE FINANCE CHARGE BEGINS TO ACCRUE If Different from Date of Contract: ____, 19__
(If a date inserted here, this is the estimated delivery date of the property.)

INSURANCE

The purchase of Credit Life or Credit Life and Credit Accident & Health Insurance is not required. Customer, however, having first examined the cost of said insurance, as indicated herein, does voluntarily elect to purchase the following coverages:

☐ Single Decreasing Credit Life Insurance (item 6d) for term of contract on One Customer signing at a Cost of .... $____

☐ Joint Decreasing Credit Life Insurance (item 6d) for term of contract on Both Customers signing at a Cost of .... $____

☐ Credit Accident and Health Insurance (item 6e) for term of contract on First Customer signing at a Cost of .... $____

(Credit Accident and Health Insurance can be purchased only if same form of Credit Life Insurance is elected.) Any insurance elected above will cover only the individual or individuals named in the certificate or policy of insurance.

Dated ____ (to be completed by Customer)

Signature of Customer to be Insured under either form of Credit Life Insurance and also under Credit Accident and Health Insurance (if elected)

Signature of non-insured Customer (if Single Life authorized) or co-insured under Joint Life Credit Life Insurance (but only if Joint Life authorized)

(NOTE: If insurance is desired, all Customers must authorize.)

CANCELLATION: Customer may, within 30 days after receipt of the policies or certificates of insurance, cancel all (but not part) of credit life and credit accident and health insurance or credit life insurance elected above by returning all credit life and credit accident and health insurance certificates received in connection with this contract to the Assignee of this contract and having all parties obligated on this contract agree in writing to such cancellation. Upon cancellation, the cost of such insurance shall be refunded or credited to the account.

Customer has the right to choose the agent or company through which Property or Physical Damage Insurance (items 6f and 6g) is to be obtained. The total cost of such insurance, if obtained through Seller, is $ 432.00 for a term of 12 months from the date hereof.

IF PHYSICAL DAMAGE INSURANCE NOT INCLUDED HEREIN, CUSTOMER HAS PURCHASED SAME FROM

William H. McCormick
(Agent's Name)
Atlanta Georgia
(Agent's Address)
American Modern Homes
(Name of Insurance Company)

SCHEDULE OF PAYMENTS

Customer agrees to pay Total of Payments (item 9 above) in ____ monthly instalments as follows:

(Check one block only)

☒ A first instalment of .... $ 263.43
☐ A final instalment of .... $ ____
☐ A final instalment consisting of a BALLOON PAYMENT of .... $ ____
(Insert as a BALLOON PAYMENT if the amount of the last instalment is more than twice the amount of any regularly scheduled equal instalment.) A BALLOON PAYMENT may be refinanced only upon such terms and conditions as the then parties to the contract may agree as of its due date.

AND

☒ 179 instalments of $ 263.43 each, all instalments payable the like date (or if no like date, then on last day) of each successive month beginning 7-27-, 19 81, or if no date is specified, one month after the date of the contract. If unequal, irregular or other than monthly instalment(s) are shown below, they shall be made in addition to the instalments shown above or, if no instalments are shown above, such unequal or irregular payments shall be controlling as to the manner of payment:

$____ on ____, 19__ $____ on ____, 19__
$____ on ____, 19__ $____ on ____, 19__

*If an asterisk (*) appears beside any unequal, irregular or other than monthly instalments, such payment is a BALLOON PAYMENT, which may be refinanced as stated above for a final instalment BALLOON PAYMENT.

DELINQUENCY CHARGE: If an instalment is in default 15 days or more, the Holder may charge and collect a delinquency charge not to exceed 5% of the instalment or $5, whichever is less. Upon such delinquency, Holder may, subject to any notice of right to cure, accelerate the unpaid balance of the contract, in which event the unpaid balance, less the rebate of Finance Charge described below and rebate of any unearned insurance premiums included in the transaction, is due and payable. In connection with such delinquency, acceleration, or any repossession, Holder may collect reasonable attorney's fees (15% if not prohibited by law), if referred to an attorney not a salaried employee of Holder, and court costs.

PREPAYMENT: CUSTOMER HAS THE RIGHT TO PREPAY IN FULL OR IN PART THE UNPAID BALANCE OF THIS CONTRACT AT ANYTIME WITHOUT PENALTY. Upon prepayment in full, Customer shall be entitled to a rebate of the unearned portion of the Finance Charge, computed by the actuarial method, except that no rebate of less than $1 will be given.

SECURITY INTEREST: Holder (meaning Seller, or its assignee if the contract is assigned) is granted and shall retain a security interest and lien interest in the following described property to secure this transaction and any renewal, extension or refinancing (NOTE: Applicable only if marked):

☒ 1. A purchase money security interest, pursuant to the Uniform Commercial Code and in accordance with the Security Agreement set forth on the reverse side, in the above described property and all equipment, tires, accessories, parts, radios, televisions, furniture, appliances and attachments now or later attached to it, but only if such constitute accessions under the Uniform Commercial Code, and the proceeds of the foregoing (all referred to in the Security Agreement on the reverse side as "Collateral").

☐ 2. A Deed to Secure Debt (or Mortgage) lien on Customer's real property located at the above address on which the above described property will be situated (or if at a different address, real property located at: ____)
This lien interest is evidenced by a Deed to Secure Debt (or Mortgage), a copy of which is attached hereto, and made a part hereof.

☒ 3. The proceeds of any physical damage insurance covering the Collateral, the proceeds of any credit life or credit accident and health insurance selected by the Customer, and returned or unearned premiums of such insurance.

☒ 4. Customer's execution of this agreement constitutes a waiver of Customer's personal property and homestead exemption rights to the personal and real property herein described.

CUSTOMER AGREES TO ABIDE BY THE TERMS OF THE SECURITY AGREEMENT ON THE REVERSE SIDE.

Customer, having been quoted both a deferred payment price and a cash price, has elected to buy the property for the above stated deferred payment price.

NOTICE TO THE BUYER: DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACES. YOU ARE ENTITLED TO AN EXACT COPY OF THE CONTRACT YOU SIGN.

Accepted: The foregoing contract is hereby assigned under the terms of the assignment on the reverse side to the following Creditor:

BARCLAYSAMERICAN/CREDIT, INC.
917 REYNOLDS STREET
AUGUSTA, GEORGIA 30902

CUSTOMER ACKNOWLEDGES RECEIPT OF A COPY OF THIS CONTRACT WHICH WAS COMPLETELY FILLED IN PRIOR TO CUSTOMER'S EXECUTION HEREOF.

Vintage Enterprises Inc. DBA/
Colonial Mobile Homes Inc.
Seller

By ____ Title ____

____ Customer

____ Customer

CONSENT TO DEED TO SECURE DEBT (OR MORTGAGE) INTEREST

In consideration of Seller's entering into this transaction with Customer, the undersigned hereby consents to the Deed to Secure Debt (or Mortgage) interest on the real property described above and agrees to sign a Deed to Secure Debt (or Mortgage) to evidence this consent.

____ Witness ____ Signature

____ Witness ____ Signature

SEE REVERSE SIDE FOR ADDITIONAL INFORMATION

Form No. [illegible] (GA.) (3-81)
(Mobile Home Only)
FEDERAL PREEMPTION CONTRACT

ORIGINAL – FILE IN FIREPROOF FILE CABINET

NOTICE OF PROPOSED CREDIT LIFE AND CREDIT ACCIDENT AND HEALTH INSURANCE

Credit life and credit accident and health insurance is included in this transaction only if a charge therefor is set forth herein, as indicated in the "Insurance" section on the reverse side, subject to acceptance by the insurer, The Citadel Life Insurance Company, P. O. Box 31488, Charlotte, North Carolina 28231 (for credit life and credit accident and health insurance on Motor Vehicle and Recreational Vehicle Contracts), or Paramount Life Insurance Company, P. O. Box 2480, Grand Rapids, Michigan 49501 (for credit life insurance on all Mobile Home Contracts and Recreational Vehicle Contracts if the total of payments shown on the reverse side exceeds $10,000), as applicable. The amount of premiums and the type of insurance purchased are set out on the reverse side in the "Insurance" section. Such insurance will cover only the individual(s) designated and signing as Insured in the "Insurance" section set forth on the reverse side, such signature(s) also constituting signed acceptance by such individual(s) of this notice. The term of such insurance will commence as of the date the indebtedness is incurred and will be the same as the term of the indebtedness, which is set forth on the reverse side. The amount of credit life insurance will pay Holder (creditor) the amount of indebtedness, if any, owing at the time of death subject to a maximum amount under the applicable group policy of $20,000 (The Citadel Life Insurance Company) or $20,000 (Paramount Life Insurance Company), as applicable. The amount of credit accident and health insurance will pay Holder monthly benefits in installments equivalent to the monthly payments required under the contract for the term of any disability covered by the policy, subject to a maximum amount of the smaller of either the initial amount of indebtedness (total of payments shown on reverse side) or $10,000 under the group policy. All such insurance proceeds will be applied to reduce or discharge the indebtedness. If insurance is declined by the insurer or otherwise does not become effective, any premium therefor will be credited or paid to the individual(s) entitled thereto and if insurance is terminated prior to the scheduled maturity date of the indebtedness, any premium refund due will be credited or paid promptly to the individual(s) entitled thereto, the refund being computed in accordance with the refund formula on file with the state Insurance Department. In order to induce insurer to effect any such insurance, the individual(s) desiring such coverage declares to the best of his knowledge and belief that he is now in good health and he authorizes any physician or hospital to disclose to insurer, in the event of his death or disability, all information concerning his death or disability as well as his medical history prior to the date of this transaction. All the foregoing is subject to all terms, conditions and provisions of the policies or certificates to be issued.

SECURITY AGREEMENT

The Collateral shall be at Customer's risk and Customer shall procure and maintain for the term hereof insurance, against all physical damage risks at Customer's expense in such form and for such amounts as Holder may require, the proceeds thereof to be payable as interest shall appear, with mortgagee's loss payable clause attached. Holder may, as creditor of Customer, purchase such insurance effective thereafter, although nothing herein contained shall impose a duty upon Holder to do so. Customer will reimburse Holder for the actual cost of such insurance to the extent that the same is not included in the deferred payment price, the amount of such reimbursement together with a Finance Charge at the highest lawful rate, to be paid in equal installments over the remaining term concurrently with the remaining unpaid installments set forth above, and to constitute an additional obligation of Customer hereunder. Customer hereby assigns to Holder any moneys not in excess of the unpaid balance hereunder which may become payable under such and other insurance, including return or unearned premiums, and directs any insurance company to make payments directly to Holder to be applied to said unpaid balance and appoints Holder as attorney in fact to endorse any draft. In the event of any default under this contract, Holder is authorized to cancel said insurance and credit any premium refund received against said unpaid balance.

Customer agrees to pay promptly all taxes and assessments upon the Collateral and for its use or operation and on this contract; to keep the Collateral in good condition and free from liens, levies, claims or charges of any kind; that all equipment, tires, accessories, parts, radios, and attachments installed in or affixed to the Collateral shall, as defined by the Uniform Commercial Code, become part of the Collateral by accession; not to sell, encumber or abandon the Collateral, or use it for hire, charter or illegally; not to remove or attempt to remove said Collateral from the county and state given above as Customer's address without notifying Holder in writing and not remove the Collateral from the continental United States without the Holder's express written consent; to keep and maintain the Collateral as personal property only and not to allow it to become part of any freehold; to send notice by registered mail to Holder after repossession but before resale of the Collateral if Customer claims that any articles not included herein were contained in the Collateral at the time of repossession, failure to do so being a waiver of said lien to any subsequent claim therefor. Any notice to Customer shall be sufficiently given if mailed to the address of Customer stated herein.

Time is of the essence. Holder may collect a delinquency and collection charge on each installment in default for 15 days or more in an amount not exceeding 5% of each said installment or $5, whichever is less. If Customer defaults on any obligation under this contract, or if Holder shall consider the indebtedness or the Collateral insecure, the full balance may, upon election of Holder, without notice, subject to any notice of right to cure, become due and payable, less the required rebate of the Finance Charge, and rebate of any unearned insurance premiums included in this transaction, together with reasonable attorney's fees (15% if not prohibited by law) if this contract is referred for collection to an attorney, plus court costs. Customer agrees in any such case to pay said amount or, at Holder's election, to deliver the Collateral to Holder, and Holder may, without notice or demand for performance or legal process, peaceably enter any premises, but not into any dwelling, where the Collateral may be found, peaceably take possession of it and custody of anything found in it. Upon default, Holder shall have all of the remedies of a secured party under the Uniform Commercial Code. The Collateral may be sold, leased or otherwise disposed of with or without notice publicly or privately, with or without having the Collateral at the sale, and Holder may acquire the Collateral at any such disposition. The proceeds of disposition less all expenses of retaking, storing, repairing and selling, and to the extent permitted by applicable law, attorney's fees and legal expenses incurred by the Holder shall be credited to the unpaid balance due hereunder. Customer is liable for, and shall forthwith pay any deficiency; any surplus shall be paid to Customer. It is agreed that sale to a dealer is a commercially reasonable method of disposition, and that if prior notice to Customer of a sale or other intended disposition of the Collateral is required, 5 days' notice to Customer is reasonable notice.

If Seller assigns this contract, Seller shall not be assignee's agent for transmission of payments or for any purpose.

Waiver of any default or acceptance of any past due payment shall not be a waiver of any subsequent or any other default. Holder's rights and remedies hereunder are cumulative. If any part of this contract is invalid, unenforceable or inconsistent with the applicable laws or regulations of the State of Seller's address herein, such part shall be deemed amended, modified or deleted to conform thereto.

No change in this contract shall be binding unless in writing and no agreement, representation or warranty shall be binding on the Holder unless expressly contained herein.

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

GUARANTY

In consideration of the acceptance of the instrument on the reverse side hereof, or its purchase by any assignee, we jointly and severally guarantee to any Holder the payment promptly when due of every installment thereunder and the payment on demand of the entire unpaid balance and all other obligations of Customer thereunder, including reasonable attorney's fees, if Customer defaults in any payment of any installment at its due date or in any other manner, without first requiring Holder to proceed against Customer. We warrant that the contract is genuine, legally valid and enforceable and waive notice of acceptance hereof and of defaults thereunder and consent that Holder may, without affecting our liability, compromise or release, by operation of law or otherwise, any rights against and grant extensions of time of payment to Customer and other obligors. If we default on any obligation under this Guaranty and Holder refers the same to an attorney for collection, we shall also be liable to and pay Holder attorney's fees (15% of the amount in default, if not prohibited by law), court costs and disbursements. Witness our hands and seals.

CORPORATE GUARANTOR

____
Name of Guarantor

By: ______________________________ Title

INDIVIDUAL GUARANTOR

______________________________ (SEAL)
Name

______________________________ (SEAL)
Name

TERMS OF SELLER'S ASSIGNMENT

We hereby sell and assign the contract on the reverse side and all interest in the property described on the front hereof, together with any Deed to Secure Debt (or Mortgage) given as security for this contract, and our rights under any guaranty to Assignee shown on the front hereof (hereinafter called "you") without recourse as to Customer's obligation of payment, except as may be otherwise provided in any underlying agreement between us, with full power to you in your or our name to collect and discharge the same and to take all such legal or other proceedings as we might take, save for this assignment. We warrant that: the contract, Deed to Secure Debt (or Mortgage) and any guaranty are genuine, legally valid and enforceable; we have complied with all disclosure requirements imposed by the applicable Federal and State Laws and Regulations; we have complied with all applicable Federal and State Laws and Regulations relating to the contract and the establishment of the contract and any Deed to Secure Debt (or Mortgage) given as security herein; we hereby convey good title thereto; all statements of facts therein are true; the Customer was quoted the cash price and the deferred payment price as stated therein; no part of the down payment shown as paid in cash is owing by loan or note and any trade-in shown was received by us for the allowance stated therein; all statements made by Customer on any forms related thereto are true to our knowledge and belief; we have clear title to the property, free of all liens and encumbrances, except for this contract; any Deed to Secure Debt (or Mortgage) taken as security for this contract has been duly recorded and is a first lien or encumbrance on the property described, except as expressly noted therein; Customer is not a minor and has capacity to contract; Certificate of Title showing the first lien or encumbrance in your favor has been or will be forthwith obtained, with the lien thereon perfected as of the date of the contract, if permitted by law. We further warrant and agree to abide by all agreements, warranties or guarantees, either express, implied or required by law, afforded Customer relative to the property described on the front hereof. All warranties herein contained are made to induce you to purchase this contract and if there is a breach of any, or if Customer withholds payment, as required under the contract, because Customer alleges a claim, defense or set-off against us, without regard to your or our knowledge or lack of knowledge with respect thereto or your reliance thereon, we will on demand purchase this contract from you for the balance then remaining unpaid, plus any and all costs and expenses paid or incurred in respect thereto; in addition, if Customer recovers any amounts from you as a result of such claim, we will reimburse you for such amounts paid to Customer. We waive all demands and notice of default and consent that, without notice to us, you may extend time to or compound or release, by operation of law or otherwise, any rights against Customer or any other obligor. If we execute any guaranty covering this transaction, the words "without recourse as to Customer's obligation of payment" are deemed deleted, and notwithstanding the provisions of any underlying agreement whatsoever between us, your recourse as to us on this assignment shall be as stated in such guaranty. If we do not execute any such guaranty and have no underlying agreement with you governing our assignment to you of contracts for the type of chattel here sold, then notwithstanding anything in this assignment, this contract shall be deemed sold to you, as to recourse, with our assignment to you in your standard full recourse form.

(See other side for Seller's signature to assignment)

Form No. [illegible] (GA.) (2-81)
Mobile Home Only
FEDERAL PREEMPTION CONTRACT

Senator GORTON. Mr. Fox.

STATEMENT OF ALAN FOX, CONSUMER FEDERATION OF AMERICA, WASHINGTON, DC

Mr. Fox. Thank you very much, Mr. Chairman, for the opportunity to testify today. My name is Alan Fox. I'm legislative representative for the Consumer Federation of America. CFA consists of over 200 local, State, and national consumer, cooperative, senior citizen, labor and rural organizations with a combined membership of over 30 million people.

At the outset, we agree, Mr. Chairman, with your statement that those who advocate legislation have some obligation to prove a case that legislation is needed, that there's a problem here. We believe that nothing that's been placed on the record supports that claim and I will specifically address later on the many wild and exaggerated claims that have been made about the potential harm to the mobile home financing system and to other elements of the industry if legislation is not adopted.

We believe that it's at least significant that the first attempt to deal with this issue was an attempt made without the benefit of hearings, without the benefit of open discussion. I think that indicates the lenders' evaluation of their own case because we believe that in an open forum such as this their case simply does not stand.

DISPARITY OF POWER AND INFLUENCE

It's very important to point out and it's very relevant to these proceedings to point out the disparity in power and influence between the financial interests who are seeking to change the law and the consumers whose rights they would undermine if the law is indeed changed, because that disparity is the reason for the law existing as it does today.

Congress in 1980 I think very wisely recognized that mobile home consumers uniquely among other consumers, and certainly uniquely among other borrowers affected by the 1980 law, are extremely vulnerable. They are poor. They are poorly educated. They are not well informed of their rights. They are easy to intimidate by lenders who have the resources and the capability to intimidate them.

That's why Congress did what it did in the 1980 law. That's why uniquely among all the arrangements in the usury preemptions in 1980 mobile home consumers were provided with a set of protections and lenders were not provided with an absolute preemption but with a deal. They were allowed to charge mobile home consumers any rate of interest but only so long as those protections are provided. If those protections are not provided, Congress recognized that the ensuing violation was not hypertechnical or minimal in any respect, that instead the contract would become subject to the State usury law and if the rate of interest exceeded the State limit, then the contract would be considered illegally usurious and State penalties for such a violation would apply.

Congress did not establish this scheme accidentally. It was not a case where some other issue was meant to be covered and mobile home contracts fell accidentally under that coverage. That scheme applied specifically and only to mobile home purchases. There was no oversight. There was no omission. There's clear congressional intent that violations of the sort that have been cited would be regarded as serious violations of consumer rights and I think largely because of who the victims were in such instances.

There is no reason to believe that the relationship between lenders and borrowers has changed much since 1980. Mobile home consumers are still among the most vulnerable consumers in our society and consequently we see no reason to abandon a very strong and proper method of protection for a particularly vulnerable class of consumers.

We reject the notion that the mobile home financing industry or some other broad class of businesses is in danger because of the pending litigation. What's happened is that a small handful, a very small handful of lenders have been taken to court. Some have lost. Some have won. And only the special interests of the small number who have lost are really at stake here today.

It's simply not a broad national issue affecting a large number of lenders at this point and there have been a lot of misleading scare tactics that have attempted to stampede the Congress into acting on the basis of claims that the entire mobile home financing system is going to collapse if something isn't done immediately.

In fact, very few contracts have been called into question. In fact, all of these contracts have been those used by finance companies, which hold less than half of the Nation's outstanding mobile home credit. In fact, many mobile home contracts have been written, particularly in recent years, at interest rates that do not exceed State usury ceilings, and many State laws would prohibit the residents of those States from collecting any damages under the relationship between the Federal preemption and the State law.

I want to go over these facts in some detail. First of all, we're aware of only six finance company contracts which have been the subject of litigation. The courts have found in favor of mobile home buyers in some of those cases. They have found against them in at least one. None of those cases are completed. A couple of them have gone to the court of appeals level. They may yet reach the Supreme Court. And all these cases have arisen in just two States.

Litigation has been pending for some time. Other borrowers, other attorneys, have had ample notice that there's an issue out there that may involve a large amount of money, but only those six cases have occurred—or only those cases involving those six finance companies.

Clearly, there is no groundswell of litigation which is threatening to engulf mobile home financing today.

Second, we're not aware of a single contract used by a regulated financial institution, by a bank, by a savings and loan or by a credit union, which has been called into question. But according to current statistics, of nearly $26 billion in outstanding mobile home debt as of the end of August 1985, nearly two-thirds is held by just those institutions. In the year since 1984 that proportion has increased while the proportion held by finance companies has declined significantly.

Third, in fact, mobile home credit currently accounts for only 3.2 percent of all finance company receivables. Even if it were true—and we don't for a minute believe it—that every mobile home contract held by every finance company in the United States was in danger, that's a relatively small portion of all the business that's done by finance companies in this country.

BANK INTEREST RATE DECLINED SIGNIFICANTLY

Now, fourth, is the fact that the interest rate charged by commercial banks for mobile home loans has declined significantly over the past couple of years. It's indeed doubtful that in the past couple of years the preemption law was needed at all because of the general decline in interest rates. I regret that we don't have comparable figures on the finance charges assessed by finance companies, but as of August 1985 the average interest charged by commercial banks for mobile home loans has declined to 14.72 percent, which is well below most States 'usury ceilings.

In fact, looking at the Federal Reserve survey of the terms of mobile home financing for the last 5 years, we find that the last time the average rate was over 18 percent was more than 3 years ago, the last time the average rate was over 16 percent was more than 2 years ago. These rates have declined significantly.

It's very clear, contrary to the claims of the industry, that a substantial proportion of the mobile home contracts that have been written in the past 5 years, and probably the majority of the mobile home contracts written since the adoption of the 1980 law, have been written at rates below State usury ceilings and, therefore, there is no issue involved here today which affects those contracts.

Finally, the requirements of the 1980 law are irrelevant entirely in two types of States, regardless of what the rate of interest is in the contract. Those are States which have abolished State usury ceilings, as a number of States have in the past 5 years; and second, those States which have enacted overrides of the Federal preemption.

We have consulted three different sources and I regret to say that the sources don't always agree on what the status of the law is in the various States. In some cases a State was listed as fitting into both of those categories and I don't know whether that's accurate or not, but we have identified, based on these sources, perhaps 27 States where one or both of those conditions apply and where for at least some of the consumers of mobile home contracts there simply is no issue because the Federal preemption just doesn't have any effect on contracts in those States.

The final point is, again, although these suits have been pending for some time, there simply is no evidence of broad impact on the market for mobile home credit. Mr. Evans just cited statistics showing how successful the legislation is in expanding credit. In his written testimony he speaks of the current situation, not the potential but the current situation, "has inhibited creditors from entering or remaining in the market for manufactured housing finance" and the current situation has "impaired their ability to raise or increased the cost to creditors of funds used for manufactured housing finance."

Now those are totally unsupported statements. There is nothing in any of the documents that supports those claims.

In fact, the data is quite clear that there's just been no broad impact on the mobile home market due to the pending litigation or due to any potential litigation in the future.

So, in short, the claim that pending litigation broadly threatens mobile home financing has no foundation and there's plenty of evidence to indicate that a substantial proportion, probably the vast majority, of mobile home contracts simply are not relevant to the issues being raised today.

What's happened is that a few finance companies are liable in a few States because they tried to have it both ways. Most lenders contracts are not subject to questioning and most State laws would not permit challenges to those contracts even if they failed to meet the Federal standards.

We think it's also appropriate to focus on the pattern of behavior of that handful of finance companies whose contracts are under litigation. As has been pointed out, at this point the court cases have only dealt with the face of the contracts but there's been evidence placed on the record that indicates damage beyond that posed by the terms on the face of the contract and the statement to the contrary is simply not accurate.

Every case that was brought against a finance company was brought in response to abuses of consumers' rights, to threats of foreclosure, to threats of repossession made without proper 30 days notice, and that information is fully on the record.

The errant lenders here have not simply made inadvertent disclosure errors. They have taken advantage of disclosures which are inconsisent with the requirements of the law and they have taken advantage of the lack of sophistication of the buyers to clearly violate the substantive rights of these consumers, and that failure to make disclosures in the proper manner has to be seen as part and parcel of an attempt to deny consumers all their substantive rights or a significant proportion of their substantive rights under these mobile home contracts.

Nor is the question here today——

Senator GORTON. Mr. Fox, you're well over your 10 minutes.

Mr. FOX. I'm sorry. I didn't realize that. Well, we've addressed some of the other issues in the written statement and that's on the record, so I will stop at this point. Thank you.

[The complete prepared statement follows:]

STATEMENT ON

"MOBILE HOME FINANCING"

BY

ALAN FOX
LEGISLATIVE REPRESENTATIVE
CONSUMER FEDERATION OF AMERICA

BEFORE THE
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER AFFAIRS
SENATE COMMITTEE ON BANKING
HON. SLADE GORTON, CHAIRMAN

November 6, 1985

My name is Alan Fox. I am Legislative Representative for the Consumer Federation of America, which consists of over 200 local, state and national consumer, cooperative, senior citizen, labor and rural organizations with a combined membership of over 30 million people.

The issue before us today is quite clear. It is a conflict between the prerogatives of entrenched, powerful financial interests and the rights of consumers who are, as a whole, poorer and more poorly educated than average.

The story is a familiar one: The financial interests were given a substantial benefit through a change in the law. In return, they were obligated to follow a few simple rules in order to make use of that benefit. A few proved unable or unwilling to meet this minimal obligation. Some have been so found by courts established to protect the interests even of the least of us against the power of the mightiest. So those who were unable to follow the rules have come to Congress to get the rules changed. They first attempted to do so under cover of darkness, without hearings or proper consideration. Having been discovered, they now must make their claim in full daylight. We believe they chose the first path precisely because their claims cannot stand up when fully exposed.

The disparity in power and influence between the financial interests seeking to change the law and the consumers whose rights they would undermine is very relevant to this proceeding. As a group, mobile home buyers are more vulnerable than the average homeowner because they are poorer and less well educated than average.

As of 1983, 35% of all mobile home owners had income under $10,000. 25% are senior citizens, and an equal proportion are young married couples. 21% have less than a sixth grade education. Over half of all mobile homes are located outside of metropolitan areas, where consumer education and legal assistance programs are often less accessible.

These facts are relevant not just because they point out who the consumers are who stand to lose their rights if the proposed legislation is adopted. They are important because they point out why the protections of the 1980 law were established, why the penalties for violating that law should be maintained, and why mobile home consumers, alone among all the borrowers affected by the 1980 law, were singled out for such protections.

The arrangement offered mobile home creditors in the 1980 law is clear: Mobile home consumers may be charged any rate of interest, so long as certain protections are provided. If those protections are not provided, the violation is not "technical" or "minimal." The contract becomes subject to state law and, if the rate of interest exceeds a state limit, the contract is illegally usurious and the state penalties for such a violation apply.

This scheme was not established accidentally. It applies only to failure to fully provide these protections to buyers of mobile homes. It was not enacted through oversight or omission or with the intent to cover some other class of violations. Although the 1980 law also preempted state usury ceilings with respect to business, agricultural and mortgage loans, only mobile home buyers were provided with these protections. The Act contains no provisions which would entail reversion to state usury ceilings with respect to any other class of loans, except when a state specifically overrides the federal preemption.

Congress in 1980 recognized the vulnerability of mobile home consumers and intentionally provided them with a strong shield against unfair practices. Congress in 1980 intended the protections to be taken seriously and to be enforced through application of state usury laws. We see no reason to abandon this strong method of protection for a particularly vulnerable class of consumers.

Congress has been asked to throw out this enforcement mechanism the very first time it has come into use. A few lenders have tried to make loans without meeting their responsibilities to consumers. Most lenders have complied with the law with no difficulty. We reject the notion that the mobile home financing industry or some other broad class of businesses is in danger. A small handful of lenders have been taken to court. Some have lost, some have won. Only the special interests of that small number which have lost are at stake.

The issue is simply not a broad national issue affecting a large number of lenders. Very few contracts have been called into question. All have been contracts used by finance companies, which hold less than half of the nation's outstanding mobile home credit. Many mobile home contracts have been written at interest rates which do not exceed state limits. And many state laws would prohibit the residents of those states from collecting any damages.

We are aware of only six finance company contracts which have been the subjects of litigation. Courts have found in favor of mobile home buyers in four of those cases, but only two cases have reached the appeals court level and one of those cases was won by the finance company. All of these cases have arisen in just two states. Clearly, there is no groundswell of litigation threatening to engulf mobile home financing.

We are not aware of a single contract used by a regulated financial institution which has been called into question. Yet, according to Federal Reserve Board statistics, of the nearly $26 billion in outstanding mobile home debt as of the end of August 1985, nearly two-thirds was held by banks, savings and loans and credit unions, and just over a third was held by finance companies. In the year since August 1984, the mobile home credit held by finance companies has declined by over $800 million, while the debt held by financial institutions has increased by over $1.7 billion. In fact, mobile home credit currently accounts for only 3.2% of all finance company receivables.

One reason for this decline in lending by finance companies is that the interest charged by commercial banks for mobile home loans has declined, on the average, to below 15%, a rate far below most states' usury ceilings. The Federal Reserve Board has surveyed the terms of mobile home financing at commercial banks quarterly for many years. In the 22 quarters surveyed since the beginning of 1980, the Fed has found an average rate above 18% only three times, most recently in August 1982. The average exceeded 17% in seven quarters in 1981 and 1982, and not again since. The average has not exceeded 16% for more than two years.

Rates of 15%, 16%, and even 18% violate state usury ceilings in only a handful of states. Given that commercial banks provide more mobile home credit than any other source, it is quite clear that the majority of mobile home contracts written since the adoption of the

1980 law have been written at rates below state usury ceilings.

Furthermore, the requirements of the 1980 law are irrelevant in two classes of states regardless of the rate of interest: States which have abolished state usury ceilings and states which have enacted overrides of the federal preemption. I have examined three sources -- the 1984 editions of Cost of Personal Borrowing in the United States and Thorndike's Consumer Credit Computation and Compliance Guide, as well as Commerce Clearing House's Consumer Credit Guide in looseleaf binders. Based on this review, it appears that the following states fall into one, and in some cases both, of those categories:

> Arizona, Arkansas, Colorado, Delaware, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Maine, Massachusetts, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oregon, South Carolina, South Dakota, Utah, Wisconsin.

Some of these states, for example Georgia, enacted overrides in 1982 or 1983. As a result, some consumers have contracts written with rates assuming the federal preemption while later consumers do not. Most of the 27 states listed above appear to have eliminated usury ceilings. Consumers in those states would have no recourse if a lender failed to provide the federally mandated protections, since such a contract would still be valid under state law.

In addition to these states, several other states appear to limit recoverable damages to the excessive interest charged, or a multiple of the excess, rather than to the entire amount of interest. These states include Maryland, Missouri, Ohio, Pennsylvania and Tennessee.

In short, the claim that pending litigation broadly threatens mobile home financing is without foundation. A few finance companies are liable in a few states because they tried to have it both ways. Most lenders' contracts are not subject to questioning, and most states' laws would not permit challenges to those contracts even if they failed to meet the federal standards.

Some have tried to draw a distinction between consumers who were damaged because their rights upon default were not observed, and other consumers, subject to the same contracts, who were not damaged in this manner because they have not been in default. We believe this distinction is unwarranted because it ignores the pattern of behavior of the handful of finance companies whose contracts are under litigation.

The fact is that every case brought against a finance company contract was brought in response to abuses of consumers' rights which went beyond the question of contract disclosures. In the Citicorp Homeowners, Inc. case, a Federal District Court found "a definite pattern on the part of the Defendants. . . to contact debtors. . . and endeavor to make collections and obtain payments from these borrowers in the same manner that is usually associated with or contemplated with the small loan industry."

"Here we have a situation," the Court stated later, "where the lender has gone somewhat further than a situation where it has merely attempted to utilize contractual provisions which are contrary to the statute and regulations. We have a situation where the lender through its agents and operatives has gone even beyond the contract and demanded immediate possession and taken action by telephone to repossess and to foreclose."

The other cases present similar facts. The errant lenders have not simply made inadvertent disclosure errors. They have taken advantage of improper disclosures and lack of sophistication of the buyers to clearly violate the substantive rights of these consumers as well. Their failure to make the proper disclosures must be seen as part and parcel as an attempt to deny consumers their substantive rights. The fact that some of these violations have not proceeded to the point where further violations have occurred is irrelevant. The muddy contract terms are necessary precursors to further violations of consumers' rights, and should be seen in that light as intentional efforts to mislead so later actions may be more easily taken.

The question is not whether Congress must step in to save the system of financing mobile homes. That system is not even remotely in danger. The question is whether Congress should save a small number of lenders who have been found by federal courts to have failed to meet the conditions under which the lenders were permitted to bypass state laws. We can conceive of no justification for such an action. Rescuing these companies from the consequences of their mistakes would undermine states' abilities to enforce their laws. It would also send lenders the signal that disclosure requirements are "merely" technical matters, and that the rights of vulnerable consumers may be violated at will because the violators will be rescued from the consequences of their actions.

The issue is limited in its immediate effect. It has been handled with discrimination by the courts. That is where the issue should be settled.

Senator GORTON. Mr. Fox, did the CFA support or oppose the 1980 law while it was being considered in the Congress?

Mr. FOX. I know that our position in general has been to oppose Federal preemption of State usury laws. The 1980 law, as I understand it, contained a number of other provisions. It was passed 4 years before I was on the CFA staff and I intended to go back to look at some of my predecessor's files to see what our position was on the 1980 law as an entire package. I don't know the answer to that. I would be happy to provide it later. But our general position on this particular issue is that we believe that the States ought to set usury ceilings for all forms of consumer credit and that Federal preemption removing those ceilings are inappropriate, that the States have shown the flexibility to respond to changing conditions and the fact that many States have on their own removed the usury ceilings is an indication of that.

[The following information was subsequently supplied for the record:]

CFA
Consumer Federation of America

November 15, 1985

Hon. Slade Gorton
Chairman, Subcommittee on Financial
  Institutions and Consumer Affairs
Senate Banking Committee
Washington, DC 20510

Dear Senator Gorton:

At the November 6 hearing on mobile home usury preemption, you asked whether Consumer Federation of America supported passage of the Depository Institutions Deregulation and Monetary Control Act in 1980.

The legislation considered by Congress in 1979 and 1980 took its final form relatively late in the process. CFA supported legislation to remove Regulation Q limits on interest payable to consumers on savings and checking accounts. At the same time, we opposed extension of the then temporary preemption of state usury ceilings. I have enclosed a copy of the testimony by Dr. Lee Richardson before the House Banking Committee's Financial Institutions Subcommittee on these issues.

CFA took no position on the bill in its final form. Our 1979 Congressional Voting Record indicates our opposition to a substitute offered on the Senate floor which would have removed nationwide authorization for NOW accounts. Final passage of the bill in the Senate was by voice vote.

Since 1981, we have repeatedly testified against federal preemption of state usury ceilings. We recognize, however, that the wisdom of that override is not an issue before you at this time. We ask only that the elements of the override legislation which impose obligations on lenders be preserved if those elements which confer benefits on those lenders are to remain in force.

Thank you once again for the opportunity to present our views at the hearing.

Sincerely yours,

Alan Fox
Legislative Representative

Enclosure

1424 16th Street, N.W., Suite 604 • Washington, D.C. 20036 • (202) 387-6121

Senator GORTON. Mr. Evans, did your organization support or oppose the pattern of the 1980 law, the conditional Federal preemption?

Mr. EVANS. Yes, we were very much involved in helping and urging the passage of this provision. We thought it was very necessary.

Senator GORTON. Thank you. I'll come back with questions.

Mr. Ehrle.

STATEMENT OF WILLIAM L. EHRLE, NATIONAL MANUFACTURED HOUSING FINANCE ASSOCIATION AND COORDINATING COUNCIL ON MANUFACTURED HOUSING FINANCE, WASHINGTON, DC

Mr. EHRLE. Thank you, Mr. Chairman.

I do believe there are national issues involved and I'll cover those. The written testimony of course is submitted and I speak on behalf of the National Manufactured Housing Finance Association, as well as the Coordinating Council on Manufactured Housing Finance.

Personally, I am both the president and general counsel of the Texas Manufactured Housing Association but have been involved in this particular subject matter and issue since the inception of the various usury preemption statutes.

Mr. Chairman, I want to make only three points in summary.

First, that the VA and FHA preemptions enacted by the Congress were not repealed and were not overridden by the final section 501 usury preemption with the consumer protections.

NEED FOR CLARIFICATION

Second, I think that there is definitely a national need for clarification so that lenders and financial institutions will have a right to cure for bona fide errors, bona fide omissions, good faith situations.

Third, we think that clarification of the kind and type of State legislation which was required to override the VA and FHA preemptive statutes is needed.

Let me just amplify those if I may. For example, in looking at these, look at the dates. The VA preemption on November 28, 1979; FHA, December 21, 1979; the 90-day temporary overall general preemption, December 28, 1979. These were all in the processes together. Congress was obviously considering the impact of all three at the same time, both in committee hearings as well as on the floor. There's no question about that.

Then came March 31, 1980, the section 501 of the DIDMCA Act. Obviously, 90 days is gone. So then we're left with these three statutes. We're simply saying that it is imperative from a national standpoint that Congress clarify the fact that these three stand on their own.

The conference report, as was indicated by the plaintiffs' attorneys, refers to the consumer protections that are available in VA and FHA for the purpose of the section 501 usury preemption. As a matter of fact, Senator Cranston was instrumental in obtaining the VA usury preemption that was enacted and became effective in November 1979.

So our position as the Coordinating Council, which participated in all three of these and on which I testified before the House Housing Subcommittee in 1980, is that the VA preemption, the FHA preemption, and section 501 stand alone and by themselves. They were considered each together. Each are separate statutes, but now the contention is made—now the contention is made that, oh, no, a FHA approved form of contract that was used in 1981 if it complies with FHA regulations or a VA contract if it complies with VA regulations is now no good and the lender is subject to penalties of twice the total finance charge because it didn't meet some technical requirement of section 501.

Mr. Chairman, Senator Cranston, we simply submit that that was not the intention of Congress. So we are here today on behalf of the Coordinating Council on Manufactured Housing Finance and the National Manufactured Housing Finance Association to say this clarification is essential. It is essential if we are going to continue to have VA and FHA financing.

Now if Congress wants to coordinate all three and say, OK, there's one set of consumer protection regulations, then we do not oppose that, but we think that must be done prospectively because we don't think Congress has done it in the history relating to these three acts.

So that's a critical point from the standpoint—and it's the primary focus of the testimony on behalf of the Coordinating Council this morning.

Let me give you an example. Two cases are mentioned in which it's alleged in the courts that the lenders did not comply with section 501, the *Doyle* v. *Southern Guaranty* case, section 501 violation is alleged. That is an FHA contract. That contract was prepared according to the consumer protection regulations promulgated by FHA.

Is that lender then subject to twice the finance charge because of compliance with the act preempting title I of FHA loans? *Wood* v. *Fort Wayne Mortgage,* that's a VA contract. No, it does not meet all of the provisions of section 501 because the VA regulations are different.

This has to be clarified by Congress or else we are going to wind up with very little FHA or VA financing available.

AVAILABILITY OF FINANCING HAS NOT COLLAPSED

These are serious questions. No, I can't say that the financing availability for manufactured housing has collapsed because these questions have just recently arisen, but I can say to you that there certainly is the prospect for the collapse of financing VA and FHA and through the Ginnie Mae secondary market. There must be absolute certainty because of the secondary markets with reference to these particular contracts.

So we urge you to resolve these questions and say, OK, VA and FHA were fine and if you want to make them equal with regard to or the same with regard to consumer protections, then that would be fine; and FHA and VA do have consumer protections. They require actuarial method. They limit late charges. They prohibit balloon payments. They review forms of contracts for program inclusion. They actually have approved forms of warranty. So there are consumer protections in those programs.

We support the amendments contained in draft No. 415 with appropriate language inserted and we have prepared those for the staff relating to VA and FHA mortgage situations.

Well, Mr. Chairman, let me cover the cure of bona fide errors. A clerk in a regional office sends out a 10-day notice in accordance with VA and FHA regulations inadvertently. The loan is a conventional loan subject to section 501. Now does that trigger, because of the inadvertence of that 10-day notice letter—does that trigger twice the time price differential or twice the finance charge? We think it should not.

Those are the kinds of bona fide errors or mistakes we are talking about. A typing clerk inadvertently pulls a VA form that may not meet specifically the form required for section 501. That's an inadvertent mistake. That's a good faith error. Those are the kinds of things that we're talking about that need a cure.

Then last, Georgia changed its interest rates in 1981 with reference to motor vehicles. The phrase mobile homes is included in there because Georgia treats mobile homes as motor vehicles. However, at that time the Federal Government had defined these particular houses as manufactured homes. So there's a question as to whether or not the Georgia change of interest rates actually then overrode the VA and FHA preemptions.

So we're asking Congress to clarify the extent of State action that was required to override the VA and FHA preemptions. We do believe there are national interests involved, Mr. Chairman. We are not trying to change the rules in the middle of the ball game. We are now trying to understand what those rules were from the outset.

Thank you very much for allowing me to participate.

Senator GORTON. Thank you.

[The complete prepared statement and an exhibit follow:]

Statement of William L. Ehrle
President and General Counsel
Texas Manufactured Housing Association
Austin, Texas

For the

National Manufactured Housing Finance Association

and the

Coordinating Council on Manufactured Housing Finance

Before the

Subcommittee on Financial Institutions
and Consumer Affairs
Committee on Banking, Housing, and Urban Affairs

United States Senate

Hearings on

Amendments to the Laws Governing Federal
Preemption of State Laws Regulating
Interest Rates and Other Charges for
Residential Manufactured Homes

November 6, 1985

Mr. Chairman, and distinquished members of the Subcommittee, my name is Will Ehrle. I am the President and General Counsel of the Texas Manufactured Housing Association of Austin, Texas. I am accompanied by Richard I. Peyster, of Weiner, McCaffrey, Brodsky & Kaplan, P.C. of Washington, D.C., counsel to both the National Manufactured Housing Finance Association and the Coordinating Council on Manufactured Housing Finance.

The Texas Manufactured Housing Association is a statewide organization of manufactured home manufacturers, retailers and creditors with approximately 1,500 members. The Texas Manufactured Housing Association is a member of one of the constituent groups of the Coordinating Council on Manufactured Housing Finance.

I am appearing today on behalf of two major national manufactured housing industry trade groups: The National Manufactured Housing Finance Association and the Coordinating Council on Manufactured Housing Finance.

National Manufactured Housing Finance Association

The National Manufactured Housing Finance Association (NMHFA) is a national organization comprised of manufactured home lenders, investment bankers, insurers, and others providing lending-related services for the manufactured housing industry. The NMHFA primarily works with the federal regulatory agencies, including, among others, the Federal Housing Administration (FHA), the Government National Mortgage

Association (GNMA), and the Veterans Administration (VA), and also with the Congress. The NMHFA seeks to improve the overall climate for manufactured home lending, and to focus attention on matters which affect the financing of manufactured homes. The members of the NMHFA finance approximately 80 percent of the VA-guaranteed and FHA-insured manufactured home loans for which GNMA provides secondary market financing through its guarantee of mortgage-backed securities. Included as members of the NMHFA are three companies currently defending class action law suits in federal court in Georgia where plaintiffs have alleged a failure on their part to comply fully with federal usury preemption regulations. These companies are: Southern Guaranty Corporation, Fort Wayne Mortgage Company, and First Manufactured Housing Credit Corporation, each located in a different state.

The Coordinating Council on Manufactured Housing Finance

The Coordinating Council on Manufactured Housing Finance (CCMHF or Coordinating Council) consists of two major national manufactured housing industry trade associations. They are:

1) The Manufactured Housing Institute, a national association representing approximately 80 manufactured home manufacturers and some 300 supplier firms that furnish components, services and financing to the industry; and

2) The National Manufactured Housing Federation, representing 44 state and regional associations of

manufacturers, suppliers, retailers, and park operators, including the Texas Manufactured Housing Association.

When it comes to finance issues, the Coordinating Council, working with the Washington staff of its two member organizations, is the national "voice" of the production and retailing arms of the manufactured housing industry.

Though primarily a nonlender organization, the Coordinating Council and its members recognize the paramount importance of readily available credit to every segment of the manufactured housing industry and to the home buying public. For that reason, the Coordinating Council has as its primary goal the expansion of affordable financing opportunities for manufactured home purchases.

Summary of Issues

The NMHFA and CCMHF strongly support the current effort to make certain technical amendments to Section 501 of the Depository Institutions Deregulation and Monetary Control Act of 1980 (12 U.S.C. §1735f-7 note) (Section 501). We believe that these proposed amendments will cause Section 501 to more accurately reflect the original congressional intent.

In 1980 Congress sought to make credit available in states where artificially low usury rates made home purchase credit unavailable. At that time, five and a half years ago, I appeared before this Subcommittee's counterpart in the U.S. House of Representatives on behalf of the Coordinating Council on Manufactured Housing Finance to urge the inclusion of manufactured home loans and credit sale instruments within the usury preemption provision then under consideration as part of H.R. 4986, which became the Depository Institutions Deregulation and Monetary Control Act of 1980. A copy of my 1980 statement is attached for the Subcommittee's information.

The Congress heard our pleas for help in making home purchase credit available to those living in states where such credit had virtually dried up and responded with necessary legislation. I am, therefore, saddened to have to return to Washington today because the good intentions of Congress are being frustrated by those who have urged upon the courts a hyper-technical reading of Section 501 and the Federal Home Loan Bank Board (FHLBB) regulations promulgated thereunder, which could result in exorbitant and totally unfair and unjustified judgments against creditors who acted in good faith, and in enormous legal fees. (A group of plaintiff's lawyers in Georgia are currently involved in no less than eight class action law suits on the same or similar Section 501 issues.)

I have, therefore, returned to ask again for your help in ensuring that the federal usury preemption statutes are permitted to function and serve the purposes for which they were enacted. This can be accomplished by a relatively simple package of amendments that do not deprive consumers of a single right or protection granted to them by Section 501 of the FHLBB regulations. Only the right to file class action law suits for enormous, windfall damage awards, with equally excessive attorney's fees, would fall victim to these proposed amendments.

In adopting the proposed amendment package, you will be recognizing that:

- For many families, particularly first-time home buyers and the elderly, manufactured housing is the only form of affordable housing;
- Manufactured homes are the only type of housing built to a federally administered building code that helps assure a safe home of quality construction, while preserving the cost efficiencies of factory home production;
- A ready source of funds for manufactured housing finance is necessary because of the nation's need for affordable housing;
- The FHA insurance, VA guaranty, and GNMA Mortgage-Backed Securities programs greatly assist creditors in providing a ready source of affordable home purchase credit;
- The federal usury preemptions providing for FHA-insured loans (12 U.S.C. §1735f-7), VA-guaranteed loans (38 U.S.C. §2828), and conventional loans (Section 501), have been of paramount importance in preempting state laws setting artificially low

interest rate ceilings from causing a critical shortage of home purchase credit;

- The availability of the several usury preemption statutes has greatly enhanced existing, and the development of new, secondary market mortgage programs to further increase available manufactured home purchase loan funds;
- The numerous consumer protections contained in the FHA and VA program regulations, as well as those contained in the FHLBB regulations promulgated pursuant to Section 501, have also benefitted home buyers;
- Hyper-technical interpretations of the statutes and regulations, such as those being urged upon the courts in Georgia and North Carolina in order to obtain large windfall damages and legal fees, will have a chilling effect on the availability of manufactured home purchase loan funds, and also could severely injure the entire manufactured housing industry nationwide;
- Congressional action is needed now to provide a clear statement by the Congress that it never intended, by enacting Section 501, to repeal by inference the FHA and VA usury preemption statutes enacted only a few months earlier;
- Congressional action is needed now to make clear that the Congress intended that a state must show clear intent to opt out of the coverage of the FHA and VA

usury preemptions, and not merely do so by inference in enacting a change to its general interest rate laws covering a wide diversity of transactions in addition to manufactured home loans;

- Congressional action is needed now to permit creditors acting in good faith to cure innocent errors in their loan or credit sale documents, by providing to borrowers all of the rights they would have had, had such errors not been made;
- Congressional action is needed now to amend Section 501 to ensure that its original purpose of making home purchase credit available is not frustrated by hyper-technical interpretations of its provisions, leading to class action law suits with excessive damage awards and attorney's fees.
- Without these proposed congressional actions, the fear of litigation could have a severe chilling effect on lenders, which could result in a serious shortgage of available credit for the purchase of this major form of affordable housing by low- to moderate-income families.

Manufactured Housing

Manufactured housing (formerly known as "mobile homes") is a term which basically describes residential structures which are built in a factory and delivered to a site on their own wheels and chassis, rather than built at the site. Manufactured housing is constructed in conformance with a federally preemptive building code administered by the Department of Housing and Urban Development (the National Manufactured Home Construction and Safety Standards Act of 1974, 42 U.S.C. §5401 *et seq*.).

Manufactured housing comprises a significant segment of this nation's housing and is one of the few (if not only) forms of housing affordable to low- and moderate-income home buyers, particularly first-time home buyers and the elderly. (*See The Report of the President's Commission on Housing*, 1982, p. 85.)

In 1984, the average manufactured home, with over 1,000 square feet of living space, placed in a park on a rental lot, cost its buyer under $22,000 (including set-up costs). That same year, the average of new site-constructed home (with land) cost more than $97,000. In 1983, manufactured housing accounted for approximately 82 percent of all sales of new homes priced under $50,000.

Since 1980, new manufactured home shipments (roughly equivalent to sales) have accounted for a substantial percentage of the nation's new housing starts. From 1980 through 1984, approximately 1,291,400 new manufactured homes were shipped to retailers nationwide for sale to home buyers.

Georgia Usury Litigation

To our knowledge, six class action law suits, all brought by the same group of plaintiff's lawyers, alleging violations of the consumer protection provisions of Section 501, are currently pending in the federal courts in Georgia. Similar allegations have also arisen in individual actions in Georgia state courts, and two class action law suits with the identical allegations are pending in state court in North Carolina (which, we understand, also involve the same group of Georgia plaintiff's counsel).

Although no total damage figures have been stated in the complaints, plaintiffs are seeking two times the total finance charge contracted for on each loan contract (pursuant to Georgia law). If we assume that from 1980 through 1984 the average loan contract was for approximately $18,000 with a 15-year term, and an average interest rate of 16.5 percent, then the average loan contract called for a finance charge of approximately $30,000. During the years 1980 through 1984, there were approximately 65,000 manufactured homes sold in Georgia. During the years in question, industry statistics show that between 82 percent and 92 percent of all home sales were financed. If we use a conservative 85 percent, then more than 55,200 homes were financed in Georgia during the years in question, with total finance charges well in excess of $1.6 billion -- again, in Georgia alone.

At the requested damages of two times the finance charges contracted for, in the state of Georgia, potentially in excess of $3.2 billion of damages could be sought through litigation similar to that currently pending in the courts. Of course, it is possible that some loan contracts were written at a rate less than the state usury rate (up through 1983 it was approximately 14 percent, but for the preemption). However, clearly the potential for draconian damages exists, even if only a fraction of the $3.2 billion, and equally clear is the potential for hefty contingent legal fees. (Even at a typical one-third contingency fee, one is reminded of the late Senator Everett Dirksen's immortal words, "a billion here, a billion there, and soon you are talking about real money!").

Currently, two of these Georgia class action cases have been dealt with by the U.S. Court of Appeals for the Eleventh Circuit, and are pending before the U.S. Supreme Court on petitions for writs of certiorari. Three other cases are currently pending before the Eleventh Circuit, and one case was just filed in federal district court within the past few weeks.

Of particular importance to the groups on whose behalf I appear today are two of these cases still pending, without decision, before the Eleventh Circuit, Doyle v. Southern Guaranty Corporation and Wood v. Fort Wayne Mortgage Company. These two cases have a different wrinkle from the other cases in that the contracts of the named plaintiffs were respectively

FHA-insured and VA-guaranteed, and, therefore, were originated not in reliance on Section 501, but rather in reliance on the federal usury preemptions specifically enacted for those programs. In each of these cases plaintiffs allege that somehow or other Section 501, when enacted, impliedly repealed, or in some unstated fashion, limited, the more specific FHA and VA preemption statutes. They then alleged the obvious, that the contracts do not comply with the separate consumer protection provisions of Section 501. Of course, these contracts were never written to comply with Section 501, but rather with the applicable FHA or VA program regulations. In fact, lenders relied on instructions from FHA that they need not comply with the provisions of Section 501 and the FHLBB regulations, and that they should follow only the FHA program requirements.

The federal district court in Georgia ruled on motions in both cases in favor of plaintiff's position. The court, however, recognizing the importance and complexity of the issues involved, immediately certified its decisions for interlocutory appeals to the U.S. Court of Appeals for the Eleventh Circuit. The Court of Appeals has agreed to hear these cases on an interlocutory basis, and they are still pending before the court.

The issues in these cases are of great importance because, although it is not impossible to bring a contract into compliance with both FHA or VA regulations as well as Section

501, few FHA/VA lenders did so because the Congress, in enacting Section 501, never in any manner revealed an intent to repeal the FHA and VA usury preemption statutes for manufactured home loans, and furthermore, FHA specifically instructed lenders that they need not comply with the FHLBB Section 501 regulations.

In addition to the above issue, for the first time on appeal, plaintiffs claim that, even if the FHA and VA preemptions survived the enactment of Section 501, the Georgia legislature had acted to opt out of coverage of those preemptions through a 1980 change in the interest rate ceiling under the Motor Vehicle Finance Act (covering cars, mopeds, RVs and manufactured homes). Again, plaintiffs make this argument, despite the fact that in no manner did the Georgia legislature express any intent or desire to opt out of the preemptions and to have the new interest rate apply to FHA-insured and VA-guaranteed manufactured home loans.

It is for the purpose of seeking clarifications as to Congress' intentions in enacting all three preemption statutes, that I appear before you today. The organizations on whose behalf I appear were intimately involved with the enactment of all three preemption statutes through numerous meetings with House and Senate committee staff persons, through written submissions of testimony and suggested language and through oral testimony before congressional committees. Because of our involvement, we believe that we are in a unique position to offer some insight into the legislative history of the various acts. We believe that this will help demonstrate the intentions of the Congress in enacting three separate preemption provisions.

Legislative History

By the late 1970s, rapidly increasing market interest rates had driven up the cost of credit to record levels. Instability within the housing finance market was widespread as the demands of the marketplace made the competition for housing credit intense. Compounding the credit crunch were restrictive state usury limits. Creditors able to provide funds to finance home purchases were hindered by state laws imposing an artificial ceiling on interest rates significantly lower than the prevailing cost of funds to the creditors. The squeeze on mortgage funds diverted the flow of funds to states that permitted more competitive interest rates. Furthermore, the maximum interest rate as set by the FHA and VA for their respective mortgage loan insurance and guarantee programs exceeded the rate limitations of many states. Lenders were thereby discouraged from making FHA and VA loans in those states. As a result, the allocation of credit was not uniform across the nation, with housing credit -- whether conventional or federally insured or guaranteed -- in many states becoming unavailable.

For manufactured housing finance, the restrictive and ambiguous state usury limits were more troublesome than for traditional forms of housing. On more than one occasion during this period, the Coordinating Council testified before Congress regarding the additional state impediments lenders had to overcome in making financing available to manufactured home buyers. In April 1979, the Coordinating Council testified before the House Subcommittee on Housing and Community Development that the problems included uncertainty over applicable usury limits for financing a residential manufactured home treated, as it was by many states, as personal (as opposed to real) property.

The purpose of the Congress in eventually passing usury preemption measures was to ease the severity of this home mortgage financing credit crunch, and to ensure the availability of mortgage credit in states which had artificially low usury limits, for both the site-built and manufactured housing industries. (S. Rep. No. 368, 96th Cong., 1st Sess. 18-19 (1979), reprinted in 1980 U.S. Code Cong. and Ad. News 236, 254-55.)

The effort to provide federal preemption of restrictive state usury limits for FHA, VA and conventional loans, mortgages or credit sales gained momentum near the end of the first session of the 96th Congress. Three distinct federal usury preemption measures were under simultaneous consideration, and ultimately passed, by Congress within a one-month period toward the end of 1979. Three different federal usury preemption measures were necessary to reach three different portions of the manufactured and site-built housing markets. Two of the three pieces of legislation were enacted to maintain specific usury preemption mechanisms for two federal programs -- the VA and the FHA loan programs for both site-built and manufactured homes. The third was a broad usury preemption which would cover the universe of mortgage loans, but which was particularly directed to conventional mortgages for which no preemption mechanism then was available (although, as noted below, in its initial effort, the Congress neglected to include manufactured home loans). All three preemptions were to operate on parallel tracks, and to be simultaneously available to lenders.

-- VA Usury Preemption

On November 28, 1979, legislation containing the federal usury preemption for VA loans, for site-built and manufactured homes, was signed into law as part of the Veterans Disability Compensation and Survivors Benefits Amendments of 1979 (Pub. L. No. 96-128, §401(a), 93 Stat. 982) (codified at 38 U.S.C. §1828). The VA usury provision was a derivative preemption statute. It was enacted in anticipation of the FHA preemption statute, and stated that VA-guaranteed home loans would be exempt from state usury laws wherever FHA-insured home loans also were exempt, and such preemption would remain viable as long as the FHA preemption remained in existence. The VA preemption was tied to the FHA preemption in this manner in order to "assure a coordinated federal policy with regard to the application of state anti-usury provisions." (Reports of the Senate Committee on Veterans Affairs, S. Rep. No. 260, 96th Cong. 1st Sess. 31, reprinted in 1979 U.S. Code Cong. and Ad. News 1894, 1917.) States which acted appropriately to override the FHA preemption would thereby override the VA preemption as well.

The VA usury preemption statute, by its terms, applied to "loans guaranteed or insured under this chapter" -- that is Chapter 37 of Title 38 of the U.S. Code. Chapter 37 is titled "Home, Condominium and Mobile Home Loans." Section 1819 of Chapter 37 expressly extends the VA loan guarantee program to manufactured homes. Therefore, by its terms, the VA preemption statute included VA-guaranteed loans for both site-built and manufactured homes.

The Conference Report accompanying the legislation clearly shows the great value, importance, and permanence the Congress attached to the VA usury preemption as a means of achieving the goals of the VA mobile home loan program:

> Thus, the committee emphasizes that the purpose of this provision as modified is to assure, to the maximum extent possible in any jurisdiction in which FHA loans are exempt, that no veteran seeking to use his or her loan-guarantee entitlement, whether for a coventional home, mobile home, home improvement or any other authorized purpose,

> shall be discouraged or prevented from such purpose by reason of a State antiusury provision. *Because one of the major purposes of the VA mobile home loan program is to assist Vietnam-era veterans to acquire homes, the committee strongly urges the VA to provide adequate and complete information concerning this provision to appropriate staff officials and to the financing community.*

125 Cong. Rec. 516754 (daily ed. Nov. 15, 1979). (*Emphasis added*.)

-- *The 1979 FHA Usury Preemption*

On December 21, 1979, less than one month after the VA preemption was passed, the second piece of the usury preemption legislation was enacted. The Housing and Community Development Amendments of 1979 contained a provision for usury preemption for FHA-insured loans (Pub. L. No. 96-153, §308), Section 529 of the National Housing Act 93 Stat 1101, 1113, codified at 12 U.S.C. §1735f-7). The enactment of this bill made the VA usury preemption effective.

This legislation exempted any loan, mortgage, or advance made under Titles I or II of the National Housing Act from state and local usury laws, and thus also applied both to site-built and manufactured homes. FHA-insured manufactured home loans, as an express part of the Title I insurance program, unquestionably are covered. The Conference Committee made an express finding that the FHA program regulations provided adequate consumer protections to justify enactment of the preemption. In particular, Senate Banking Committee staff made a careful examination of this issue before recommending that the Senate conferees agree to accept the House proposed provision.

-- The 1979 Temporary General Usury Law Preemption

On December 28, 1979, a week after the FHA exemption was signed into law, another usury preemption measure was enacted (Pub. L. No. 96-161, §105(d)). This provision put into immediate effect a 90-day preemption of state usury laws on "federally related" loans and mortgages that are secured by first liens on residential real property.

There are two significant points about this temporary legislation. First, manufactured home loans secured by personalty were not covered by it. It was to remove this oversight that the Coordinating Council went back to the Congress as it considered what was to become Section 501 of the DIDMCA.

Second, this usury preemption provision was aimed primarily at conventional loans, but also could be applied to FHA and VA loans. It is significant that Congress saw reason to pass the VA and FHA preemptions and this interim 90-day preemption provision, the precursor to Section 501 of DIDMCA, all within a very short period of time. Lenders making conventional loans who needed to avail themselves of state law usury preemption had no choice but to follow the provisions of the interim usury preemption. Because their loans were not insured or guaranteed by the federal government, only this temporary federal statute was available to them to overcome state antiusury laws. Lenders making FHA-insured or VA-guaranteed loans, however, would have two alternative mechanisms by which they could charge prevailing market interest rates -- either through the specific preemption afforded their respective FHA or VA loans, or through the interim general preemption available for all mortgages. (Manufactured home lenders, of course, had only the specific FHA and VA legislation available to them, because the temporary legislation did not reach conventional manufactured home loans.) Had a single mechanism for obtaining relief from restrictive state usury limitations been intended, Congress would not have made a conscious effort to sanction three distinct preemption measures within one month of each other. Rather, Congress would have enacted one general usury preemption, or expressly repealed the VA and FHA usury preemptions when the interim preemption provision was passed.

Upon resuming consideration of the controversial banking legislation, when it reconvened for its second session, the 96th Congress was prepared to undertake measures to: (1) ensure that conventional manufactured home financing was not inadvertently excluded from the usury preemption mechanism for conventional loans; (2) limit the ability of a state to override its general usury preemption; and (3) ensure that conventional manufactured home buyers were afforded consumer protection provisions similar to those available in the FHA and VA programs. The provision which emerged to accomplish all of these goals was Section 501.

-- Section 501

Although both the VA and FHA preemptions covered manufactured home financing, as I pointed out in my testimony before the other body in 1980, manufactured home loans and sales under these two federal programs accounted for only about 12 percent of the total units shipped in fiscal year 1979.

Therefore, manufactured homes financed outside the FHA or VA programs, through conventional financing, could conceivably continue to be suppressed by restrictive state usury limits and be denied the relief Congress granted to other forms of housing finance and intended to grant to manufactured home financing. To remedy this oversight, the Coordinating Council corresponded with key members of the House and Senate regarding the effect of the interim preemption provision language, and was invited to testify before the Subcommittee on Financial Institutions, Supervision, Regulation, and Insurance of the House Committee on Banking, Finance and Urban Affairs, on February 21, 1980. The recommendations of the Coordinating Council to include language in a permanent, general, usury preemption provision that clearly encompassed conventional manufactured home financing, albeit with consumer protections similar to those found in the FHA and VA programs, were accepted by Congress.

The language adopted by Congress in the general usury preemption provision of Section 501 was essentially that recommended by the Coodinating Council, even with regard to the consumer protection provisions, and was intended merely to clarify that the general usury preemption, now being made permanent, also was to be available for conventional manufactured home financing.

Nowhere in the text of Section 501 itself, or in its legislative history, can any support be found for the Georgia plaintiff's and District Court's position that the reference to manufactured homes in Section 501 was intended to repeal or supplant the FHA and VA preemptions -- which the Congress, after all, had enacted just a few months before. Congress even had applauded the consumer protections found in the FHA loan programs, and, in the Conference Report to Section 501, had instructed the FHLBB to use those regulations for guidelines in drafting consumer protection regulations for conventional manufactured home loans. The Coordinating Council, the prime proponent of this part of Section 501, emphatically never intended that such a repeal occur, and to our knowledge, at no time did any witness before, or Member of, Congress ever suggest or contemplate that such a result would, could, or should occur.

-- State Override of Federal Preemptions

In order to override the FHA preemption, a state had to pass a law changing its interest rate ceiling, specifically with respect to "such loan, mortgage or advance" (12 U.S.C. §1735f-7(b)). If a state changed its usury limit with respect specifically to the rate that could be charged on an FHA (or VA) loan, the FHA usury preemption mechanism was overridden.

In order to override the preemption provisions of Section 501, a state had to act within a three-year period (from April 1, 1980, to March 31, 1983) to either "adopt a law or certify that the voters of such state have voted in favor of any provision, constitutional or otherwise, which states explicitly and by its terms, that such state does not want the provisions" of the Section 501 preemption mechanism to apply to loans, mortgages, credit sales and advances made within the state.

Accordingly, although the override provision in the FHA preemption statute had to be specifically applicable to "such loans" -- FHA loans -- it was still arguably easier to override the FHA and VA preemptions than to override Section 501, with its detailed affirmative action requirements.

Unless Section 501 itself had been expressly overridden, however, where a state had acted to nullify the availability of the usury preemption under Section 529 and 38 U.S.C. Section 1819, a lender making FHA or VA loans could still avail itself of a usury preemption mechanism by complying with the provisions of Section 501 of DIDMCA.

-- Consumer Protections

In its opinion in Doyle, the District Court stated that the motive of Congress in its passage of the 1980 legislation was to afford mobile home borrowers "consumer protection benefits not otherwise found in the law." In this regard, the District Court is only partially correct. Although the court suggests that one of the purposes of the legislation was to augment consumer protection provisions for mobile home borrowers, that was only true for conventional loans. The Congress embraced and, indeed, praised the existing FHA and VA mobile home loan consumer protection provisions. And it is this dichotomy, between (a) the FHA/VA consumer protection provisions (which remained applicable to FHA/VA loans even if the FHA/VA preemption provisions preempted state antiusury laws), and (b) the comparable Section 501 consumer protection provisions the Congress wished to assure were available if the FHA/VA protections were not applicable, that undergirds, in part, the enactment of that part of Section 501 applicable to manufactured home loans.

Regulations governing VA-guaranteed and FHA-insured manufactured home loans containing consumer protection provisions were already in force when the 1979 FHA and VA usury preemptions were passed. For conventional manufactured home loans which had not yet received the benefit of usury preemption, there were no standard federal consumer protection provisions in existence. Congress wanted to ensure that consumers obtaining conventional financing for manufactured housing had protections similar to those available for consumers obtaining FHA or VA loans.

Having found the consumer protection provisions of FHA to be meritorious only a few months earlier (See Conf. Rep. to The Housing and Community Development Amendments of 1979, Pub. L. No. 96-153, 125 Cong. Rec. H12044 (daily ed. Dec. 13, 1979)), Congress accepted the suggestion of the Coordinating Council, offered in my testimony, and, in the Conference Report accompanying DIDMCA, directed the Bank Board to use the consumer protection provisions found in the FHA and VA regulations as a model in developing its consumer protection regulations for conventional manufactured home financing utilizing the general usury preemption. (See House Conf. Rep. on §501 of DIDMCA of 1980, Pub. L. No. 96-221, H.R. Rep. No. 842, 96th Congress, 2nd Sess. 79 (March 21, 1980), reprinted in 1980 U.S. Code Cong. and Ad. News 298, 309.)

The failure of the District Court in Doyle and Wood to appreciate this fact is the essential flaw in the District Court's analysis. It thought, erroneously, that since the Congress made Section 501 applicable both to conventional and FHA/VA manufactured home loans, it must have wanted the Section 501 consumer protections, and only those, to be applicable to FHA/VA loans as well as to conventional loans. That is incorrect. The Congress was perfectly satisfied with the FHA/VA programs, for FHA/VA loans. Instead, what the Congress was establishing was a system under which, even if a state overrode the separate FHA/VA state law usury preemptions (or even if such FHA/VA preemption was not, in fact, available with respect to any given loan because it failed to meet all of the FHA's or VA's preconditions to insurability), borrowers in that state who did not have the protections of the state's usury laws, as a result of the operation of Section 501, still would benefit from Section 501's consumer protection provisions.

-- Section 501 Did Not Repeal the Specific FHA and VA Preemption Statutes

Section 501 was not created within a legislative vacuum. Usury preemption was debated in the fall of 1979 as part of the Depository Institutions Deregulation bill, during the same period that the VA and FHA preemptions were being considered in Committees.

Congress was cognizant of the three preemption measures moving from Committee to floor consideration. Senator Cranston, the Chairman of the Senate Committee on Veterans' Affairs in 1979, who sponsored the VA usury preemption mechanism, and Senator Proxmire, Chairman of the Senate Banking, Housing and Urban Affairs Committee in 1979, who sponsored the FHA preemption, both later played key roles in sponsoring the amendment which secured passage of the general interim usury provision in Public Law No. 96-161. Both the general interim preemption and the FHA preemption bills were concurrently being developed by the same Senate Committee of which this subcommittee is a part.

Consideration of Section 501 subsequent to the FHA and VA preemptions presented a golden opportunity to repeal the FHA and VA preemptions, if that had been Congress' intent. Yet, Section 501 is devoid of any language that expressly repeals or limits those two prior federal usury preemption measures. It is axiomatic that in order to find an express repeal by later law, there must be no doubt as to what the later law intended. Here, the Congress' intention cannot be doubted -- no repeal was intended.

Furthermore, it is quite unlikely that Congress, having praised the consumer protections in the FHA programs in late December 1979, would find the need to replace them with new protections in the first week of March 1980 (the date when Congress and conferees completed work on Section 501). It becomes even harder to accept this unlikely proposition when, in its Conference Report to Section 501, Congress instructed the FHLBB to use those same FHA regulations as models for the Section 501 consumer protection regulations.

Proposed Congressional Action

Over the past six weeks Senate Legislative Counsel has made several efforts at drafting language for amendments to Section 501 that would take a variety of steps to ensure that the original intentions of Congress are not frustrated by parties urging hyper-technical interpretations upon the courts in order to obtain enormous windfall damage awards, totally unrelated to any actual harm, if any, they might have suffered. Some of the proposed amendments included: an instruction to the FHLBB to promulgate model disclosure forms, which could be used and safely relied upon by creditors; reasonable statutory penalties for failure to comply with Section 501 that would reimburse borrowers for actual damages, but prohibit windfall damages; provisions enabling creditors to cure good faith errors; and a statement that all manufactured home loans and credit sales insured or guaranteed by FHA or VA _after_ the effective date of these amendments, would be subject to Section 501 (_i.e._, prospectively only, recognizing that this was not the law prior to enactment of these proposed amendments).

With respect to curing the problems associated with Section 501 and conventionally financed manufactured home loans, we believe that the Senate Banking Committee staff and the Senate Legislative Counsel have done a commendable job, and we support the proposed amendments contained in Title V of the Committee Print draft numbered "089910.418."

However, with regard to the problems concerning FHA-insured and VA-guaranteed manufactured home loans and credit sales, we believe that the draft solves only part of the problem, and that additional provisions are needed.

In our view, the most direct manner to clarify the status of the FHA and VA usury preemption statutes is by way of a direct statement by the Congress declaring that in enacting Section 501 it did not intend to supercede, repeal or in any way limit the federal preemptions of state usury laws provided by the FHA and VA statutes.

In addition, a similar direct statement by the Congress that it was its intent in enacting the FHA usury preemption that a state could opt out of the coverage of the preemption only by the state's affirmative expression of intent to reassert state control with specific reference to such FHA-insured loans, advances and credit sales.

Such direct statements of Congress concerning previously enacted legislation have been expressly recognized by the United States Supreme Court, in the case of FHA v. The Darlington, Inc. (358 U.S. 84, 1958) (which in fact concerned the FHA and the National Housing Act), as being entitled to great weight and deference.

In addition to the above two recommended provisions, we would also suggest that the proposed cure provision contained in subsection (i)(2) of the Senate Legislative Counsel's draft be amended in subparagraph (A) to read as follows: "There has been substantial compliance with the regulations issued under subsection (c), or full compliance with the applicable program regulations of the Federal Housing Administration or the Veterans Administration for insured or guaranteed loans, advances or credit sales."

We believe that with these simple additions, the proposed amendment package would fully ensure that the original good and just purposes of all three federal usury preemption statutes would be realized. It would greatly assist in assuring the continued availability of affordable housing and affordable housing credit. At the same time, not one single consumer protection provision contained in any of the statutes or regulations applicable to the three statutes would be adversely affected in any way. In fact, the ability of consumers to obtain the consumer protections would be substantially enhanced. Today, many lenders, finding a "cloud" of doubt about their contracts because of the Eleventh Circuit's interpretations of Section 501, would like to amend their contracts to remove the "cloud" and to cure any possible legal problems that may have inadvertently arisen due to their not having had the benefit of the Eleventh Circuit's "reading" of Section 501. However, the fear of triggering a ruinous class action law suit against themselves discourages them from seeking to remove the lingering doubts. If these proposed amendments were enacted, these lenders, and many other lenders nationwide, would gladly amend their contracts, thereby properly affording consumers with rights they might otherwise never have. Creditors are not trying to avoid offering consumer protections. They seek only clarify as to their precise obligations.

As can be seen, borrowers would not be harmed in any way by the enactment of these proposed amendments. In fact, they would be co-beneficiaries of the amendments, because the amendments vastly increase the likelihood that they will be afforded all of the rights they are legally entitled to. Only windfall damages, totally unrelated to actual harm, would be denied by these proposed amendments. Of course, there would be a real loser if these proposals are enacted -- the lawyers who stand to earn millions of dollars in legal fees by filing class action law suits.

Conclusion

In conclusion, I want to thank you, Mr. Chairman, the entire Subcommittee, and your hardworking staffs for providing the National Manufactured Housing Finance Association and the Coordinating Council on Manufactured Housing Finance with this opportunity to testify on these important issues. Should the Congress decide to act on our proposals, it will be taking a major step in continuing to ensure the availability of credit for the purchase of affordable housing.

Our Washington Counsel is available, at your convenience, to meet with your staff and provide whatever assistance may be needed.

Again, thank you, Mr. Chairman. I would be pleased to answer any questions you might have.

ATTACHMENT

Pre-emption of State Law Governing Interest Rates and Other Charges for Residential Mobile Home Housing Loans

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Statement of Will Ehrle
President and General Counsel
Texas Manufactured Housing Association
Austin, Texas

for the
Coordinating Council on Manufactured Housing Finance

before the
Subcommittee on Financial Institutions, Supervision, Regulation and Insurance
Committee on Banking, Finance, and Urban Affairs
United States House of Representatives

February 21, 1980

Mr. Chairman, and distinguished members of the Subcommittee, my name is Will Ehrle. I am the President and General Counsel of the Texas Manufactured Housing Association, of Austin, Texas, and Acting Executive Director of the National Manufactured Housing Federation. I am accompanied by Harvey Weiner, Washington Counsel to the Coordinating Council.

The Texas Manufactured Housing Association has over 600 members, including most of the mobile home dealers and manufacturers in the state. The National Manufactured Housing Federation is made up of 22 of such state-wide dealer or dealer/manufacturer associations, and includes mobile home lenders and park operators. Altogether, the membership represented by the Federation consists of more than 10,000 small businesses nationwide, with over 70% of all mobile home retail sales occurring in states represented in the Federation's membership.

Both the Texas Manufactured Housing Association, and the National Manufactured Housing Federation, are members of the Coordinating Council on Manufactured Housing Finance, on whose behalf I appear today.

The members of the Coordinating Council on Manufactured Housing are:

Chief Industries, Inc., Aurora, Nebraska
Fleetwood Enterprises, Inc., Riverside California
Golden West Homes, Santa Ana, California
Kaufman & Broad Home Systems, Inc., Los Angeles California
National Manufactured Housing Federation, Washington, D.C.
Siegel Mobile Home Group, Salt Lake City, Utah
Silvercrest Industries, Inc., Buena Park, California
Texas Manufactured Housing Association, Austin, Texas
Western Manufactured Housing Institute, Anaheim, California (representing 28 mobile home manufacturers in 13 Western states producing over 65% of the homes shipped in those states)
Wick Building Systems, Inc., Madison, Wisconsin

Accordingly, the Coordinating Council speaks for a major segment of the mobile home industry and an important part of the housing sector of our nation's economy.

The Coordinating Council's primary goal is to improve the availability of adequate and affordable consumer financing for mobile home purchasers. Because this Subcommittee has the opportunity, through its treatment of the provisions in the bills before it pre-empting state law governing interest rates and other charges, to extend significantly the availablity of lower cost mobile home housing to consumers throughout our nation, I am most pleased to present to you the views of the Coordinating Council on this subject.

As you know, late last year the Congress passed P.L. 96-161, which provided that first liens on traditional residential real property were to be exempt from state law usury, interest and ancillary charge limitations through March 31, 1980. Regrettably, except in those limited circumstances where loans made on residential mobile homes qualify as real property under state law, as we read this Act, it provides no relief to the purchasers of most residential mobile homes.

Also late last year, in the Housing and Community Development Amendments of 1979, the Congress similarly exempted from state law limitations loans and credit sales insured under the National Housing Act (and a similar act exempted those loans guaranteed by the Veterans Administration). Fortunately, unlike the provisions of P.L. 96-161, these provisions expressly included mobile home loans. Unfortunately, however, mobile home loans and sales under such federal government programs accounted for only about 12% of the total units shipped in fiscal year 1979.

Under the current statutory scheme, then, conventional mobile home loans and sales, except in those limited circumstances where (a) the mobile home is considered to be real estate under state law or (b) the loan or sale is insured or guaranteed under federal programs, are treated differently from every other form of residential housing.

Unlike all other forms of residential housing, such mobile home sales and loans have been denied the relief the Congress has seen fit to extend to all other forms of housing, and remain subject to state law governing interest rates and other charges.

We think that situation is not in the best interests of housing consumers, nor of those who make and sell mobile homes. For the reasons detailed below, the Coordinating Council firmly believes it is imperative that residential mobile home housing loans and sales, particularly if they meet certain criteria, should and must be included in any provisions, temporary or permanent, pre-empting such state law interest rates and other charges, irrespective of whether the home itself is considered to be real or personal property under state law. We believe that the fulfillment of our nation's housing commitment for the provision of safe, durable and affordable housing to all of our citizens--and particularly to younger families and the elderly--requires no less. And we ask for the Subcommittee's assistance in achieving this goal through the legislative amendments we propose below.

Residential Mobile Home Housing Today

Almost 11 million Americans, located in every state of our nation, today call a mobile home, "home."[1] And that number is growing.

In 1978, over 275,000 mobile homes were produced and shipped in the United States,[2] amounting to approximately 12% of the total housing units started.[3] In 1979, 276,854 mobile homes were shippped,[4] ranging, in the first three quarters of the year, from approximately 12.4% to 15.8% of all housing starts.[5] And in August of 1979, the latest month for which revised data have been published, mobile home shipments amounted to 19.3% of all single family (including mobile home) housing starts.[6]

In addition, residential mobile home houses are fast-becoming the only affordable housing source for lower income purchasers. In 1977, mobile homes accounted for a full two-thirds of all single-family home starts under $35,000[7], and I believe it obvious that that figure is substantially higher today. In the third quarter of 1979, the average cost of a new mobile home, exclusive of land, was approximately $17,700, compared to approximately $74,700, inclusive of land, for a new traditional home.

In part, of course, this price differential between mobile homes and traditional homes results from the fact that mobile homes are less expensive to build. While the same building materials are used, mobile home producers can hold construction costs to a lower amount per square foot than site-built houses.8/

The mobile home industry not only represents a major housing resource for our country; it is also an important sector in our economy. There are over 200 companies in the United States that produce mobile homes from approximately 500 factory locations,9/ selling through approximately 12,000 mobile home retail firms nationwide.10/ Mobile home retail sales in the third quarter of 1979 amounted to a seasonally adjusted $8.72 billion.11/ And mobile home suppliers--the same companies providing the same materials to the mobile home industry that they provide to site-built homebuilders--are expected to provide billions of dollars worth of lumber, building supplies, major household appliances, insulation, and other items in 1980.12/

Residential mobile home housing today, and especially multisectional mobile homes, have been enjoying healthy rates of appreciation. The most rapid appreciation has been in Western states such as California, Washington, and Oregon, and in various other states such as Florida and New Jersey.13/

It is not only our nation's homebuyers that have recognized mobile home housing as a safe, durable, affordable, quality alternative to site-built housing. The Congress, and the states in increasing numbers, are also beginning to consider mobile homes, "homes."

In 1974, for example, the Congress enacted the National Mobile Home Construction and Safety Standards Act which provided for vigorous, nationally pre-emptive construction and safety standards for all mobile homes, enforced by HUD, the States and private-sector inspection agencies. Under that Act, every mobile home built in America is inspected in at least one phase of its construction for its compliance with these comprehensive national standards by an independent inspecting authority. No other form of housing benefits from such a program.

Even the bill before this Subcommittee today, H.R. 4986 as it passed the Senate, expressly included mobile homes within its definition of "dwelling" in the Truth-in-Lending Title of its bill (Section 412(b)). As one consequence, although such mobile homes may continue to be considered as personal property under state law, if this bill is enacted, their purchase would be subject to the three-day cooling-off provisions of that law previously applicable only to traditional residences. Indeed, at various times as it considered H.R. 4986, the Senate made clear its intention to treat mobile homes as homes, as it saw "no reason for distinguising between owners of traditional residential structures and owners of mobile homes." S. Rep. 96-368, at p. 29, accompanying H.R. 4986. And that, undoubtedly, is among the reasons Senator Proxmire indicated on the floor that even the state law pre-emption provisions of the legislation before the Subcommittee today, for first liens on residential real property--but never expressly extended to mobile homes--nevertheless were intended to apply to all such mobile homes as long as they "are used as a primary residence."[14/]

This Congressional treatment of mobile homes as homes, culminating with the inclusion of mobile home lending under the federal insurance and guarantee programs within the state law usury pre-emptions enacted late last year, has generated a somewhat parallel response--in all but the consumer financing area--in the states.

For example, although most states still treat mobile home housing as personal property unless sold with or permanently affixed to real property, a number of states--with California as a leading example--are beginning to tax mobile homes under certain conditions as real property. In doing so, they have taken the important step of easing the formerly oppressive zoning and fiscal restraints that have previously restricted mobile home residential development. Also, for the first time, a number of states are beginning to treat mobile homes as real property if installed on permanent foundations on land owned by the mobile home owner.

Despite these ever-growing signs that mobile homes are being recognized today as homes and treated in many ways like traditional housing, though, the fact is that the current consumer financing arrangements for their purchase remains largely dominated, for historic reasons, by the retail instalment sales financing instrument. To understand why this is so, and its importance to this Subcommittee's deliberations, it is necessary briefly to review that history with you.

The Historic Development of Mobile Homes and Their Consumer Financing

Buyers of the early trailer homes of several decades ago purchased a mobile home that was, in fact, as it was intended to be, truly mobile. When purchasers bought these trailers, they were treated like any other buyer of a vehicle. Their purchase was financed through retail instalment loans, typically with large down payments, "add-on" interest rates, and short payback periods. And, as their mobile homes were considered to be vehicles, they were taxed as personal property.15/

The residential mobile home house of today bears no resemblance to the trailer vehicles of past years. Its average late 1979 price in the West is in excess of $23,000, a far cry from its $1,000 trailer ancestor. Other than its original transport from plant to the site where it is set-up (in approximately equal numbers either in a park or on the homeowner's lot), today's mobile home housing is rarely ever moved again, and thus hardly mobile at all. And, as previously noted, its compliance with comprehensive construction and safety standards is tightly monitored and enforced.

Despite this dramatic alteration in the nature and quality and price of today's mobile home and its significance as a national housing resource, however, these historic consumer financing mechanisms continue to predominate in this industry. Residential mobile home housing consumer financing, today, is still largely accomplished through retail sales instalment financing instruments.

But, as noted below in more detail, the evolving retail sales instalment agreement used today, and the one which will be developed for the future for residential mobile home housing sales, again bears little resemblance to that employed decades ago to finance the purchase of trailer vehicles. The amount financed, the term, and the protections offered buyers have altered and are continuing to alter the residential mobile home housing retail instalment sales contract used today--in keeping with the nature of the underlying transaction as one for the sale of residential housing--so that these instalment instruments of today are being and can be written to incorporate many of the features of residential real property mortgage loans.

In addition, the purchase of a growing, though still not significant, portion of today's residential mobile home housing is financed not through an instalment sales contract at all, but rather through direct loans from lenders secured by the home. Washington Mutual Savings Bank, for example, has more than 8,000 direct mobile home loans outstanding, totalling $112 million.[16]

Moreover, in increasing though still insubstantial numbers, mobile home housing is being sold with improved land and financed under cross-collateralized land and home loan instruments, and under traditional real property mortgages.

In short, the nature of the mobile home house has changed dramatically since earlier years, but its consumer financing has not. Residential mobile home housing sales are still (a) typically on a relatively sophisticated retail installment contract basis, though (b) direct loans, (c) cross-collateralized land and home loans, and (d) conventional real property mortgage loans are being utilized. In addition, residential mobile home housing is increasingly being taxed as real estate, even when sold without an improved lot, although in a substantial number of states such homes continue to be taxed as personal property. The key point is, however, that regardless of the form of the transaction, the mobile home generally is personal property under state law, and as such, cannot qualify for exemption under either the current 90 day temporary pre-emption or the permanent pre-emption before this Subcommittee today.

A workable state law interest rate and other charge pre-emption provision, so clearly needed for residential mobile home housing loans and sales for the reasons described immediately below, must take into account all of these variations in the consumer financing practices of the mobile home industry and their various treatments under state law. Fortunately, that is not difficult to accomplish, in the manner we suggest in our legislative proposals section which follows thereafter.

The Impact of State Law Governing Interest Rates and Other Charges on Residential Mobile Home Housing Sales and Loans

Existing state law limitations on the maximum interest and other charges permissible for instalment sales contracts and chattel mortgages for the purchase of mobile homes vary widely, but generally are highly restrictive and out-of-synch with marketplace realities. They also cause substantial distortions in the consumer financing practices for these homes, which benefit neither seller nor purchaser.

Essentially, there are currently three serious problems with the existing pattern of state law limitations which only the Congress is able to cure, through a pre-emption provision.

First, in several states, mobile home lenders are making fewer conventional loans, because their rate of return as restricted under state law provisions is too low to make it profitable for them, particularly when compared with the return obtainable on traditional residential loans. This practice will become more wide-spread in the future if Congress enacts a pre-emption provision, without our suggested amendments, and therefore excludes mobile homes.

To place this first aspect of the problem in perspective, it must be recalled that earlier this month, HUD increased the maximum interest rate on FHA-insured mobile home loans, to

14.5% APR, while the VA increased the rate on fully guaranteed loans to 14% APR. Obviously, conventional loans, not so insured or guaranteed, bearing an annual percentage rate of interest today below these FHA and VA caps, may have a difficult time competing in the financial marketplace with FHA-insured and VA guaranteed loans, particularly if such loans are for the longer maximum term available under the government programs. Indeed, the FHA rate, which has been raised in successive steps from 12.5% in May of 1979, to 13.5% in October of 1979, to its current (but undoubtedly not final) rate of 14.5%, has traditionally lagged at least one point below the average finance rate being assessed at the comparable time by finance companies on mobile home instalment credit. And the prime rate, today, is in excess of 15%.

Unfortunately, several important states bar the extension of such mobile home loans with an APR even approaching 14.5%. Those states are listed in the charts accompanying this testimony. Indeed, we are informed that a major source of residential mobile home consumer financing is no longer making any such conventional loans in Wisconsin, and only an insignificant number in Nebraska, New York, Ohio, Vermont, and Washington. Another major lender informs us of their similar approach in Georgia and Washington .

And in my home state of Texas, with which I am personally most familiar, even with its effective maximum finance charge rate in excess of 13% APR, instalment sale and chattel mortgage loans for mobile housing sold as personel property and unsecured by real estate, are becoming ever more difficult to obtain.

Second, as the charts accompanying this testimony vividly illustrate, the impact of a state law limitation on mobile home lending and sales expressed as a maximum add-on interest rate will vary over the term of the loan. If that term is decreased, the lender's equivalent annual percentage rate return is able to approach competitive financial markeptlace rates. But, as the charts also make plain, a variation in term on a 9% add-on interest loan, between 7 years, at one end, and 20 years at the other, decreases the effective maximum interest rate obtainable from 15.19% APR to 12.93% APR. In addition, with an amount financed at $15,300, a decrease in term from 20 to 7 years on a 9% add-on interest loan increases the purchaser's monthly payments by $119, from $178 to $297. Such an increase in monthly charges quickly brings what is the only affordable form of residential housing beyond the limits of many lower income housing consumers.

Because the adverse impact upon purchasers of such increased monthly payments is substantial, most lenders confronted with these state law limitations pursue yet a third alternative. Under this third alternative, lenders are currently charging substantial discount points to manufacturers and dealers who need to secure loan commitments in order to sell their mobile homes. For example, based on my conversations with retailers in the Southwest, commitment fees are averaging between $900 and $1,000 per home. Moreover, such commitments are not available, in many cases, on an individual loan basis, but rather only when they are part of a larger commitment covering a significant number of homes.

If a small business, of the type which dominates the mobile home manufacturing and retailing industry, does not have the resources to pay for such commitments, and it thus is unable to secure lines of credit for its consumers, it will not survive in this highly credit-sensitive business. But even if the cash is available for this purpose to such a smaller mobile home manufacturer and retailer, its financial impact inevitably is felt by the consumer in the form least affordable by him--through an increased downpayment requirement.

The reason the purchaser typically sees this increase in financing cost as a larger downpayment is that mobile homes generally are sold and consumer financing is based upon an invoice price. With fixed percentages of the invoice price determining the amount financable, the only part of the transaction available to recapture the shortfall is the purchaser's down payment.

In short, under the existing regimen of state law interest and other charge restrictions for mobile home loans and sales, funds are either: (a) unavailable, in states where the maximum limits permitted for such loans and sales are not competitive in the financial marketplace; (b) available under short term loans which, pursuant to the add-on interest rate formula increases the return to the lender and thus makes them attractive to the lender but at the same time increasingly unaffordable by the purchaser; or (c) available under longer term loans, with a lower effective APR or maximum charge, but with an increased downpayment which makes such homes unaffordable to the purchaser.

The charts appended hereto graphically illustrate the problem. They list the maximum finance charge rates for various states for loans secured by mobile homes as personal property, as opposed to mortgage loans on real estate improved with mobile homes which are affixed to the realty and which do not constitute removable fixtures. In evaluating these figures, it is important to recognize that the state retail instalment sales or motor vehicle acts which generally impose such limitations on the amount of the finance charge which the buyer may contract to pay the seller, variously denominate such charges as a service charge, time price differential, finance charge, time charge or credit service charge. In addition, these figures do not reflect the maximum rates for FHA-insured and VA-guaranteed loans, for which the Congress recently pre-empted such state law limitations, or certain coventional loans by particular classes of lenders which may also be exempt from them in certain states. Finally, we would be less than forthcoming if we represented that these charts are totally accurate. They are not. The complexities of state law provisions, and the differing interperations of them by state officials, lenders, consumers and the courts, make it impossible to provide a definitive listing for you. In certain cases, as a result of these complexities and the consequences of being in error, lenders are reluctant to even consider making loans in certain jurisdictions. This is yet another reason for the Congress to act.

Unless the relief we request, through the pre-emption of such state law limitations on mobile home sales and loans, is granted, it is clear to me that the already negative forecasts for our industry for the coming year stemming from the projected recession, in these states and others, will substantially understate the doldrum into which this critically important housing sector will plunge.

Thus, the National Association of Home Builders projection that mobile home shipments in 1980 will decrease to 195,000 units, which, when compared to the actual shipments of 1979 of

276,854, would be a decline of more than 29%--the steepest percentage decline of any other form of housing[16] and the lowest level of shipments in over a decade[17]--is optimistic.

It is my personal belief that if mobile home loans and sales continue to be the only form of residential housing not exempt from such state law limitations, then the impact on mobile home production could be as severe as a 50% reduction from 1979 levels. And, moreover, it is my view that as many as 50% of the small businesses which make up the National Federation could find it impossible to secure adequate lines of financing, and thus be put out of business.

That kind of impact would be a dreadful one for lower income housing consumers, the economy, employment, and the goal of providing affordable housing. To avoid it, we respectfully but urgently request that the Subcommittee support the following legislative proposals.

Our Legislative Proposals

First and foremost, and for all of the foregoing reasons, we believe that residential mobile home housing should be recognized as the significant form of affordable housing that it truly is, and be accorded analogous relief and treatment by the Congress in the area of state law pre-emption as that extended to residential site-built housing.

The Coordinating Council believes that the findings of the Senate Committee on Banking, Housing and Urban Affairs, in reporting out the state usury restrictions of H.R. 4896 (S. Rep. 96-368) persuasively stated the case for such pre-emptive provisions and reflects the views of this Subcommittee and the House as well. Its finding that "where state usury laws require mortgage rates below market levels of interest, mortgage funds in those states will not be readily available and those funds will flow to other states where market funds are available," is undeniably accurate and borne out by our own experience. And its observation that this "artificial disruption of funds availability not only is harmful to potential homebuyers in states with such usury laws, [but] also frustrates national housing policies and programs" is as true of such state law usury limitations as it is of those analogous state laws limiting the interest and other charges that may be levied on residential mobile home housing sales and loans.

All we are asking this Subcommittee to assure, then, is that this clear-cut understanding that residential mobile home housing loans and sales should be, and are, included in the pre-emption provision of the bill, be expressly recognized in the statute itself. Given the complex state law treatment of residential mobile homes, and the regulation of their financing, there should be no ambiguity as to the intent of the Congress to include residential mobile home housing within the scope of this pre-emption provision.

To accomplish this goal, we urge that Section 205 of the Senate-passed H.R. 4986 be amended to read as follows (with additional material underlined):

(a) In section 205(a)(1) clarify that the pre-emption shall extend to "any loan, mortgage, credit sale or advance" in order to recognize expressly that retail instalment credit sales of residential mobile home housing are included;

(b) In section 205(a)(1)(A), clarify that such loans or credit sales may be "secured by a first lien on residential real property, or by a first lien on a residential mobile home," in order to make clear that the pre-emption applies to such mobile home loans and sales irrespective of whether such a residential mobile home is considered real property under state or local law but only to self-contained mobile home dwellings used as residences;

(c) In section 205(a)(1)(C), make the conforming amendment to the provisions of section 527(b)(1) by providing that "the requirement contained in section

527(b)(1) that the loan be secured by residential real property shall not apply to a loan secured by stock in a residential cooperative housing corporation or to a loan or credit sale secured by a first lien on a residential mobile home, and "the term 'federally related mortgage loan' shall include a credit sale secured by a residential mobile home;" and

(d) In section 205(a)(1)(C), to enhance the prospects of wide-spread lender participation by clarifying the type of creditor who may qualify as including not only a creditor as defined in Section 527(b)(2)(D) who makes or invests "in residential real estate loans" aggregating more than $1,000,000 per year, as presently provided by law, but also one who so makes or invests "in loans or credit sales secured by first liens on residential mobile homes." To accomplish this goal, insert in this section, immediately before the final period, the phrase ", and the term "residential real estate loans" in Section 527(b)(2)(D) of the National Housing Act shall be deemed to include loans or credit sales secured by first liens on residential mobile homes."

In addition, we believe that technical amendments to Section 527 are necessary to make clear that a credit sale transaction made in whole or part by a mobile home retailer who meets the definition of "creditor" in Section 103 (f) of the Consumer Protection Act of 1968, is exempt from state laws governing interest rates or charges so long as the indebtedness evidencing such credit sale is purchased in whole or in part by a lender, creditor or institution described in section 527 (b) of the National Housing Act or in Section 205 (a) (1) (C) of H.R. 4986. Without these technical amendments we are concerned that the small business mobile home retailer who himself makes such credit sales or loans but who does not aggregate more than $1,000,000 per year will be foreclosed from utilizing the preemption provision we advocate.

These are the legislative amendments we desire, and we firmly believe our nation requires, if it is to make progress in fulfilling its affordable housing goals. And these amendments should be made both to any further temporary extensions of its pre-emptive authority and to the permanent legislation which the Congress will enact in this area.

In presenting these proposals for your consideration, we are not oblivious to the concerns voiced by some that the lending practices which have characterized this industry in the past have not included a full measure of desirable protections for borrowers and buyers. Although there has been, historically, a divergence in those practices from those more salutary ones which have developed in the residential real property mortgage lending (in part because of the failure of the mobile home finance mechanism to keep pace with today's mobile home housing), for all of the reasons discussed above the Coordinating Council believes that the financing instruments which will increasingly be utilized in the future for the purchase of residential mobile home housing will change so they will be more like those used in real property mortgage transactions. We think that is both necessary and desirable for what is, in reality, merely two different forms of residential housing--one built at site, and the other built in whole or in part at a manufacturing plant.

Because that trend is already accelerating in the marketplace, the Coordinating Council is not certain there is a need to further encumber this bill or its legislative history with qualifications as to the type of mobile home sales and loans which will be eligible for this pre-emptive treatment. Just as marketplace forces have consistently held the average finance rate for mobile home instalment sales to within two to five points of the effective new home mortgage rate[18/]--without the necessity for an effective legislative interest rate cap--so, too, we are convinced, will those same competitive marketplace forces eventually work to eliminate the application of the Rule of 78s to the calculation of early payment refunds, among other problem areas.

Should the Congress disagree, however, or should it wish further to accelerate this development in the marketplace of such desirable protections, we could support an additional amendment to Section 205 as follows:

(d) In Section 205, add a new subsection (c) as follows: The provisions of subsection (a)(1) shall only be applicable to a loan, mortgage, credit sale or advance which is secured by a first lien on a residential mobile home which:

(1) requires computation of the finance charge refund upon prepayment to be computed by a method at least as favorable to the purchaser as the actuarial method; and

(2) includes such reasonable provisions for the protection of the purchaser with respect to: (A) balloon payments and rate of amortization; (B) late charges; and (C) advance notice prior to foreclosure or repossession, as the Federal Home Loan Bank Board may prescribe by regulation.

With this suggested amendment, loans and sales utilizing the Rule of 78s would not qualify for the exemption, nor would loans or sales failing to incorporate appropriate purchaser protections drawn from the traditional real estate mortgage field. Such a change, obviously, would hasten the recognition of mobile homes as homes, and as an important part of our nation's housing commitment.

In implementing such a new subsection "c" provision, we would suggest that the Federal Home Loan Bank Board may wish to consider the provisions of implementing regulations, handbooks and circulars governing the terms and conditions of FHA insured and VA guaranteed mobile home transactions as well as review the requirements of the standard conventional mortgage forms prescribed by FNHMA and FHLMC.

Conclusion

For all of these reasons, then, the Coordinating Council on Manufactured Housing Finance urges the Subcommittee and the House to join the Senate in Conference and to include within the scope of the provision pre-empting state laws governing interest rates and other charges, residential mobile home housing loans and sales.

I would be pleased to respond to any questions you may have, and appreciate your giving the Coordinating Council this opportunity to present its views.

FOOTNOTES

1/ Western Manufactured Housing Institute, *A Guide to Manufactured Housing* (1979).

2/ U.S. Department of Commerce, Construction Reports: Housing Starts, C 20-79-10, page 8 (October, 1979).

3/ Merrill Lynch, Pierce, Fenner, and Smith, Inc., *Institutional Report: Mobile Homes and Recreational Vehicles*, Table 2 (January 1980).

4/ National Conference of States on Building Codes and Standards, Inc., *Mobile Home Program Statistics* (January, 1980).

5/ Merrill Lynch, *supra.* n.3.

6/ Compiled from U.S. Department of Commerce, Construction Reports: Housing Starts, C 20-79-10, page 8 (October, 1979)

7/ Manufactured Housing Institute, *Quick Facts About the Manufactured Housing Industry*, page 11 (June, 1978).

8/ Western Manufactured Housing Institute, *A Guide to Manufactured Housing* (1979).

9/ *Id*.

10/ Fleetwood Enterprises, Inc., *Mobile Home Industry Backgrounder*, page 2.

11/ Merrill Lynch, *supra* n.3, Table 3, page 12 (January, 1980).

12/ Manufactured Housing Institute, *Quick Facts About the Manufactured Housing Industry*, page 11 (June, 1978).

13/ Foremost Insurance Company, study of mobile home appreciation (October 15, 1979).

14/ Congressional Record, S.15669 (daily ed.) (November 1, 1979).

15/ Liechy, "Consumer Financing of Mobile Homes: A Question of Value," 39 *Mortgage Banker* 6 (1979).

16/ National Association of Home Builders Econometric Forecasts (January 29, 1980).

17/ U.S. Department of Commerce, Construction Reports: Housing Starts C 20-79-10, page 8 (October, 1979).

18/ Merrill Lynch, *supra* n.3.

CHART - I

State Laws Governing Maximum Interest Rates and Other Charges for Mobile Home Loans

	Existing Statutory Interest Rate Ceiling	APR for 7 year term	APR for 12 year term	APR for 15 year term
Alabama	8 AO[1]	13.69	12.78	12.34
Arizona	10 AO	16.66	15.42	14.84
Arkansas	10 APR[2]	10	10	10
California	12 AO	19.5	17.93	17.23
Colorado	18 APR	18	18	18
Connecticut	18 APR	18	18	18
Delaware	7 AO	12.16	11.41	11.04
Florida	10 AO	16.66	15.42	14.84
Georgia	8 AO	13.69	12.78	12.34
Idaho	18 APR	18	18	18
Illinois	16 AO up to $500 14 AO $500 - $800 12 AO over $800	19.5[3]	17.93[3]	17.23[3]
Indiana	18 APR	18	18	18
Iowa	15 APR	15	15	15

	Existing Statutory Interest Rate Ceiling	APR for 7 year term	APR for 12 year term	APR for 15 year term
Kansas	14.45 APR	14.45	14.45	14.45
Kentucky	8 AO up to $5,000 Unregulated over $5,000	unreg.[4]	unreg.	unreg.
Louisiana	15 APR	15	15	15
Maine	13 APR	13	13	13
Maryland	9 AO	15.19	14.12	13.61
Massachussetts	8 AO	13.69	12.78	12.34
Michigan	10 AO	16.66	15.42	14.84
Minnesota	8 AO	13.69	12.78	12.34
Mississippi	25 APR to $1000 18 APR $1000 $2500 12 APR over $2500	12[3]	12[3]	12[3]
Missouri	7 AO up to $7500 unregulated over $7500	unreg.[4]	unreg.[4]	unreg.[4]
Montana	9 AO	15.19	14.12	13.61
Nebraska	12 APR	12	12	12
Nevada	12 AO	19.5	17.93	17.23
New Hampshire	unregulated	unreg.	unreg.	unreg.

	Existing Statutory Interest Rate Ceiling	APR for 7 year term	APR for 12 year term	APR for 15 year term
w Jersey	10 AO to $7500 unreg. over $7500	unreg.[4]	unreg.[4]	unreg.[4]
New Mexico	8 AO	13.69	12.28	12.34
New York	7 AO	12.16	11.41	11.04
North Carolina	14 APR	14	14	14
North Dakota	18 APR	18	18	18
Ohio	8 AO (plus $21 per yr.)	13.69	12.78	12.34
Oklahoma	18 APR	18	18	18
Oregon	9 AO	15.19	14.12	13.61
Pennsylvania	15 APR for loans 2 years or more	15	15	15
Rhode Island	21 APR	21	21	21
South Carolina	18 APR up to $25,000, unreg. thereafter	18	18	18
South Dakota	15 APR	15	15	15
Tennessee	5 points above the FRB discount rate, up to 18 APR	18	18	18

	Existing Statutory Interest Rate Ceiling	APR for 7 year term	APR for 12 year term	APR for 15 year term
Texas	13.32 APR	13.32	13.32	13.32
Utah	18 APR	18	18	18
Vermont	7 AO	12.16	11.41	11.04
Virginia	24 APR	24	24	24
Washington	12 APR	12	12	12
West Virginia	12 APR up to $25,000, unreg. thereafter	12	12	12
Wisconsin	11.70 APR	11.70	11.70	11.70
Wyoming	18 APR	18	18	18
Alaska	10 AO to $1000 thereafter 8 AO	13.69[3]	12.78[3]	12.34[3]
Hawaii	18 APR	18	18	18

1. AO = Add on interest rate
2. APR = Annual percentage rate or actuarial rate.
3. Calculations done using the maximum rate above stated dollar amount.
4. Average Mobile home costs are over the stated dollar amount, and therefore the maximum interest rates do not apply.

CHART - II

$18,000	Mobile Home Sales Price
15%	Customer Down Payment
$15,300	Amount Financed

MONTHLY PAYMENTS AND INTEREST RATES

	7 years		15 years		20 years	
	Effective Interest Rate	Monthly Payment	Effective Interest Rate	Monthly Payment	Effective Interest Rate	Monthly Payment
6 AO	10.58% APR.	$259	9.69% APR.	$162	9.26% APR.	$140
7 AO	12.16% APR.	$271	11.04% APR.	$174	10.52% APR.	$153
8 AO	13.69% APR.	$284	12.34% APR.	$187	11.74% APR.	$166
9 AO	15.19% APR.	$297	13.61% APR.	$200	12.93% APR.	$178
10 AO	16.66% APR.	$310	14.84% APR.	$212	14.09% APR.	$191

National Manufactured Housing Finance Association
and
Coordinating Council on Manufactured Housing Finance

Amendments to SLC Draft No. .415
Amendments to Section 501 of DIDMCA

The SLC Draft No. 415 amendments to section 501 of the Depository Institutions Deregulation and Monetary Control Act of 1980 should be amended as follows:

(1) by inserting on Page 4, Line 25, after "issued under subsection (c)", the following: ", or full compliance with the applicable program regulations of the Federal Housing Administration or the Veterans Administration for insured or guaranteed loans, advances or credit sales";

(2) by striking on Page 6, Line 22, through Page 7, Line 4, all of subsection "(m)";

(3) by inserting on Page 6, Line 22, the following: "(m) The Congress hereby declares that in enacting this section it did not intend to supercede, repeal or in any way limit the federal preemption of state usury laws provided for manufactured home loans, advances or credit sales by section 529 of the National Housing Act or by section 1828 of chapter 37, title 38, United States Code.";

(4) by striking on Page 6, Lines 22 and 23, the following: "(other than subsection (C)(2))"; and

(5) by inserting on Page 7, after Line 4, the following: "(n) The Congress hereby declares that it has been its intent in enacting section 529 of the National Housing Act that the reassertion of state law control over interest rates, finance charges or discount points in a home loan, advance or credit sale insured under Titles I or II of the National Housing Act, be affected only by the state's affirmative expression of intent to so reassert such control with specific reference to such insured loans, advances and credit sales.".

For further information, contact Richard I. Peyster at 202-628-2000.

Senator GORTON. Mr. Hudson and Mr. Fox, do you oppose this legislation to the extent that it is prospective only?

ONE YEAR STATUTE OF LIMITATIONS PROVISION

Mr. HUDSON. To the extent that it's prospective, it does not impact upon the clients that I represent. But out of respect for Congress, there are provisions in there that I would, in my judgment, ask the Congress not to pass, such as limiting the statute of limitation provisions to within 1 year of a violation.

Most violations will occur at the time the contract is formed. That's when the lender will reserve for itself default remedies which are inconsistent with the preemption regulations. You only give that borrower 1 year from the date of contract to make a claim.

A better way to treat that is like in the State of Washington. In the State of Washington for a violation of your State's Retail Installment Sales Act, you have within 1 year after the contract is paid off to bring any claim for a violation of that act. Because in actual practice, during the first year or so, a mobile home borrower probably will not have any problem, but later down the road is when he's faced with the prospect of unlawful repossession, foreclosure or acceleration. And under this legislation as proposed, he will have lost his opportunity to challenge it.

We also oppose limitation on the amounts of damages. This is not like truth-in-lending. Truth-in-lending is an act designed to create informed credit. It does not change the terms of the contract insofar as the interest rate, the principal that's borrowed, the amount of time over which it's paid back.

Preemption, on the other hand, gave lenders the right to step in and change a term of the contract to take more money from the borrowers, and the potential to do that unlawfully is limited only by how much you could get the unsophisticated borrowers to sign up for. So if you limit the recovery of those borrowers you almost give an incentive to lenders to violate the law. They know that their penalties are restricted and it may be well worth their while to go ahead and violate the law if their damages are going to be limited to $1,000 or $500,000 total in a class action because the actual damages are going to be undermined. You will have taken away a State redress under the forfeiture of illegal finance charges. Otherwise, they will have no recovery.

Senator GORTON. Mr. Fox.

Mr. FOX. I agree entirely with Mr. Hudson. We don't see any need to change any part of the law. We don't believe that a case has been proven that shows that there are indeed problems and we would urge Congress to leave the situation to the courts. We believe the courts have dealt with the issue in a discriminating manner, have made proper distinctions, and that the issue is a relatively small one that doesn't require rapid changes in the law.

Senator GORTON. Mr. Evans, I must say that I find what I might consider to be the heart of your argument rather strange. You've criticized the courts for hypertechnical distinctions in interpreting this law. That's usually the kind of criticism we get from Mr. Fox, the people representing consumers.

You all represent sophisticated lending institutions with very sophisticated legal staffs. Is the situation really as complicated as you make it out to be? If so, why?

Mr. EVANS. It's not complicated if you look at the law. I agree with Mr. Hudson 100 percent. The law was very clearly written and it was very clearly implemented by the Home Loan Bank Board. It said if you take action, you must serve notice.

What is ironical here is that Mr. Hudson has made to me the very clear admission in his own testimony that this is not a disclosure provision, yet the whole suit that's involved here is based on an assumed misdisclosure, not the denial of any actual right. That is what creates a problem for us.

It is a court-invented type of provision about which we have no notice and I don't know how we could ever be put on notice, Mr. Chairman, about any series of constructions which any court might presume to make down the road.

We are not asking for one whit of what you passed in 1980 or one whit of what the Federal Home Loan Bank Board passed by way of regulation.

Senator GORTON. Are you telling me that as far as you're concerned it's not difficult to comply with the regulations, but only with court interpretations of those regulations?

Mr. EVANS. In this case, yes, and that was the whole history of truth-in-lending and I think that's what we tried to attack in 1980. Indeed, the minority or dissent in this case made that very clear.

Senator GORTON. What will happen to the availability of mobile home financing if we don't do anything?

Mr. EVANS. Well, let me try to clear up an apparent contradiction here that we are continuing to make mobile home loans at a great rate. That is the business of about 8, or 9, or 10 of our members. Actually, very few finance companies engage in mobile home lending. They are big companies and they account for about a third or over $9 billion of mobile home credit in this country, only a very few companies. There are 14,000 banks and 4,000 S&L's that account for the rest of it.

But in this case—and I can't reconcile the 6 contracts of Mr. Fox with the 7,500 plaintiffs that Mr. Hudson alleges to represent on the cover of his testimony because we know that if they are successful in this virtually all of the contracts of these companies are going to be under attack, not only in Georgia but in South Carolina, North Carolina, and elsewhere in this country. It will be devastating.

Senator GORTON. Are you willing to ask Barclays and GECC to supply for the record the total amount of mobile home loans made in Georgia in each of the years from 1978–84 as well as either the interest rate or the range of interest rates which prevailed in each of those years?

Mr. EVANS. Mr. Chairman, I would be glad to relay that request to them.

[See the information on p. 220.]

Senator GORTON. OK. Mr. Ehrle, was Mr. Fox's statement about current interest rates accurate? Can you give me the rough interest rate at which mobile home loans are currently being made or the range of those rates?

CURRENT RATE OF INTEREST FOR MOBILE HOMES

Mr. **Ehrle**. Yes, sir; I think I can. I think the current rate for manufactured housing loans—and of course, this will vary, Mr. Chairman, from area to area and section to section of the country—but it would be approximately 2 points of interest to 2.5 points of interest or 200 basis points to 250 basis points, as the lenders say, above the typical residential real estate mortgage.

So whatever the real estate mortgage rate is today, residential real estate mortgage in single family——

Senator **Gorton**. So we are talking about 14.5 percent?

Mr. **Ehrle**. Yes, sir; I think we would be talking in terms today of something in the 14 to 15 percent range, again depending on the conventional residential real estate mortgage rate.

Senator **Gorton**. What was the high point they reached in 1979, 1980 or 1981?

Mr. **Ehrle**. I think there were a few 20 percent loans that were made. There were quite a number in the 17, 18, and 19 percent range shortly after the Federal usury preemption and the various preemptions were enacted.

Senator **Gorton**. Thank you.

Back to you, Mr. Evans. Mr. Hudson on page 5 of his written testimony states:

> Not only was the Barclays contract contrary to the regulations, Barclays used collection practices prohibited by the regulations.

Now we're not here in a fact-finding hearing, but I am interested in your response. Most particularly, would you support legislation providing you with retroactive relief if that relief were prohibited in any case in which practice is prohibited by the regulations had in fact taken place?

Mr. **Evans**. Mr. Chairman, let me answer that with an unqualified yes. Any violation of the regulation we believe should be continued, as a substantive right accrued to any borrower or debtor under that, should be preserved, and he should have the right to pursue his remedy in the court. We are not asking for relief from whatever was in that regulation or law.

In this case, I believe it's pointed out in the footnote—and this is another case where Murphy's law works overtime—that a 20-day notice provided by South Carolina was picked up by the manager and sent out instead of a 30-day notice. And that's potentially a $96,000 error.

There should be some remedy there. Maybe there was confusion caused. There may even have been an occasion for the borrower to be worried, leave his home, he may have some damage and we think that should be redressed.

What we're concerned about is the likelihood that tremendous penalties and the court being given no choice. You've given the court a death sentence type of choice here.

Senator **Gorton**. Would you comment for the record on Mr. Ehrle's proposed language with respect to VA and FHA loans?

Mr. **Evans**. I have not seen that language and I would not care to comment on it at the moment, Mr. Chairman. I would be glad to submit a written response to that question.

Senator **Gorton**. Please do.

[The following information was subsequently supplied for the record:]

Responses to Additional Questions by Senator Gorton

Q) Are you willing to ask Barclays and GECC to supply for the record the total amount of mobile home loans made in Georgia in each of the years from 1978 to 1984 as well as either the interest rate or the range of interest rates which prevailed in each of these years?

A) Neither company is aware of the availability of statistical information for the state of Georgia or other states which provides such information on an industry-wide basis. Federal Reserve Board data is not categorized by state and there is no reporting requirement imposed on creditors by Georgia law.

Of the 8 companies which are defendants in the various Georgia law suits, only GECC and BarclaysAmerican/Financial, Inc. are members of AFSA. Each is understandably reluctant to provide company specific information due to the pendency of the suits, which are sought to be maintained as class actions. Providing such information would essentially serve as discovery proceedings for the attorneys bringing these suits.

Looking solely to the November 6 testimony before the Subcommittee, however, the theoretical maximum exposure under Georgia law of the lenders on whose behalf Mr. Evans testified can be readily calculated. Based on Mr. Hudson's arguments on behalf of the putative class claimants, there are 7,500 manufactured home purchasers affected. Assuming an average purchase price of $16,000 for each unit, Mr. Evans testified that Georgia law specified a penalty of up to $92,000 for each unit. (Tr. at page 23)

By extension, the possible total penalty in Georgia alone would be $690,000,000 compared to total original purchase prices of $120,000,000. Each of the major manufactured housing lenders does business in many more states. For example, the federal rate preemption provisions of the DIDMCA have been relied upon in at least 36 states since its enactment in 1980.

While there is no industry-wide data for Georgia, we believe the experience at Barclays to be representative both as to reliance on the manufactured housing preemption provisions of DIDMCA, and the APR charged during the period of others who extended manufactured housing credit in Georgia from 1978 through 1984. For the two years prior to enactment of DIDMCA, Barclays financed less than an average of 35 manufactured housing transactions with an APR of approximately 13% in each of these years. Beginning with DIDMCA, and through 1984, Barclays financed an average of approximately 225 new manufactured housing transactions per year at an APR of approximately 17.8% (with median APRs as follows: 1980 - 15.7%; 1981 - 18.3%; 1982 - 19.5%; 1983 - 18%; and 1984 - 17.7%).

Q) Would you comment for the record on Mr. Ehrle's proposed language with respect to VA and FHA loans?

A) AFSA agrees with Mr. Ehrle that Congress did not intend to supercede or limit the VA and FHA manufactured housing preemptions when it passed Section 501 of the Depository Institutions Deregulation and Monetary Control Act of 1980.

Senator GORTON. Can't you protect yourself adequately simply by notifying present contract holders that they have a right to cure defaults under their contracts with you and have you attempted to do so?

Mr. EVANS. No; we can't. No. 1; there's no provision in the law for the sending of such a cure. No. 2, where they're the subject of a class action or potentially a class action I would doubt that that would be effective. And we're not quite sure at this point, Mr. Chairman, just what it is we should notify them about either.

Senator GORTON. Mr. Hudson, how many of the 7,500 plaintiff mobile home owners failed to receive a required 30-day notice of default before an action to repossess, foreclose, or accelerate payment of a loan was taken?

Mr. HUDSON. There's no way we can answer that. We have not been allowed to proceed thus far in the cases where we can conduct discovery to get that information. It's simply not available to us. We know that there are many because some borrowers have contacted us unilaterally, but there's no mechanism in place where we've been able to make this kind of a survey of the class members or to get the information from the lenders.

Senator GORTON. How many of those 7,500 still live in mobile homes which are the subject of these purchase contracts?

Mr. HUDSON. That is other information that we would like to get as well, Senator, but we have not been able to do so.

Senator GORTON. You don't know the answer to that, or how many have suffered actual damages?

ONLY REMEDY UNDER GEORGIA LAW

Mr. HUDSON. Well, none of them have suffered actual damages under Georgia law because the only remedy they have under Georgia law is the forfeiture of illegal finance charges because Georgia, like most other States, under the uniform commercial code [UCC], allows repossession without notice if you can do it peacefully and if you have to use process of law you can do it in 7 days, all contrary to the Federal regulations.

So if a lender repossesses without notice, there is no claim under Georgia law because he's perfectly lawful in doing it except for the forfeiture of illegal finance charges if he's charged too much.

Senator GORTON. Let's take a hypothetical since you don't have those specific answers. Suppose a homeowner continues to live in his mobile home, makes timely payments, and if he did default received a notice 30 days in advance of an action to foreclose. Now suppose that the lender notifies that individual of his 30-day cure right.

Would you object to releasing the lender from potential liability in these circumstances? If not, why not?

Mr. HUDSON. Yes; I would object to it for some of the reasons I stated earlier. That contract is illegal under Georgia law and the 1980 Preemption Act. In order to be able to charge those high interest rates, they had to give the consumer protections in the contract. It is not a law that addressed itself to subsequent conduct alone by the lender. As every institution that has addressed this issue has acknowledged, the documents had to be correct at the time the contract was entered. Mr. Ehrle argued that in 1980. Mr. Evans acknowledged it in page 6 of his testimony today. The Federal Home Loan Bank Board in the Federal Register in May and June 1980 said to be entitled to preemption the documents have to be correct when they're signed.

You simply change the thrust of the law if you take the position, well, down the road, if they do what's right, even though they contracted for something wrong, they're entitled to avoid the liabilities they have under State law. The prospect of giving that type of retroactive relief to someone who failed to get his commercial documents in compliance with the law is a concept with which we're not familiar. It could arise in the Federal income tax laws. It could arise under securities laws. It could arise in the environmental context. There's no end to where that principle would carry you if that's a principle of public policy we're willing to espouse in this country.

Senator GORTON. And it doesn't trouble you at all to assess penalties of $20,000, $40,000, maybe even $90,000 when the borrower was not foreclosed and probably wasn't even aware that there was any question about the wording of his contract?

Mr. HUDSON. First of all, there will be no double time price penalties unless a violation was willful, which is very difficult to prove and most everyone would say if someone conscientiously decided we're going to charge these higher interest rates but reserve for us remedies in the contract that we're not entitled to under Federal preemption, I don't think anyone would argue that it's unjust to impose willful penalties, if that can be proved. We don't know we can prove that in any cases. But for those for whom it was not willful, it does not trouble me because of the circumstances these borrowers find themselves in, paying historically the highest interest rates of anybody in this country under illegal contracts, to go into court and ask that they be given the remedies under State law. They were not in the position to know the difference. The lenders were sophisticated. They asked for this law. They knew how it was to operate and it's their fault they find themselves in their present predicament.

Senator GORTON. Mr. Fox, on page 2 of your written testimony you say that the consumers "stand to lose their rights if the proposed legislation is adopted."

At least for those homeowners still living in their homes and making loan payments, and especially where they have been notified of their cure rights, what are the rights they stand to lose?

Mr. FOX. They stand to lose the right, as Mr. Hudson has said, of being able to argue that a contract is not entitled to preemption and that the interest rate is usurious under State law.

I believe Congress consciously established that scheme of a very tough penalty to ensure adequate compliance and ensure complete compliance. I'm a little mystified listening to Mr. Evans to know what it is exactly—what sort of violation it would be that would entitle consumers to that remedy because I believe he said that even if there is a situation where a notice is sent out that's clearly inappropriate, that clearly violates the requirements of the regulations, that even then the recovery that Congress has permitted is too large.

I think these are appropriate penalties and ought to be maintained.

Senator GORTON. For you and for Mr. Hudson as well, would each of you comment, if you can at this point, on Mr. Ehrle's proposed language with respect to VA and FHA loans?

Mr. FOX. I've not had the opportunity to look at the VA-FHA issue and it's not something that we've dealt with at all.

Senator GORTON. If you would look at it and do so, we would appreciate it.

[The following information was subsequently supplied for the record:]

CFA

Consumer Federation of America

November 22, 1985

Honorable Slade Gorton
Chairman
Subcommittee on Financial Institutions
  and Consumer Affairs
Senate Banking Committee
Washington, D.C. 20510

Dear Senator Gorton:

Thank you for your request that we comment further on Mr. Erle's proposed FHA/VA language. CFA has not been involved in this issue, and at this time we have no position on the language.

Sincerely yours,

Alan Fox

Alan Fox
Legislative Representative

AF/lag

1424 16th Street, N.W., Suite 604 • Washington, D.C. 20036 • (202) 387-6121

Mr. **Hudson**. I would ask the committee not to accept that language for this reason. The December 1979, FHA preemption used general language to apply to all FHA loan programs. Whatever was included in FHA loan programs was going to be preempted from State law. Then 4 months later, in March 1980, when the present act was passed, that was the first time that Congress had specifically addressed the problems of mobile home lending and in that act specifically made it applicable to FHA and VA loan programs and required that in order to have preemption the consumer protections listed in that act and in FHLBB regulations would have to be afforded.

EVEN FHA OR VA ARE COVERED WITH CONSUMER PROTECTIONS

They are not the same protections that one would get under FHA and VA. They are more extensive. To us, it is an unmistakable expression of congressional intent that if you're going to exceed State interest limits on mobile homes then these consumer protections must be given.

Senator **Gorton**. Whether it's conventional, FHA, or VA?

Mr. **Hudson**. That's correct, because there's no logical distinction that I can make for why some borrowers, just because their loans are insured through the FHA and VA programs, should not be entitled to the same protection against onerous default remedies as conventional purchasers.

Senator **Gorton**. Mr. Ehrle, would you answer the question I asked Mr. Evans earlier? What is your view of what will take place with respect to credit availability if we do not pass any legislation at all on this subject?

Mr. **Ehrle**. Mr. Chairman, so long as interest rates are very low, so long as there are no problems with State usury statutes, the availability of financing for manufactured housing will continue.

Obviously, the reason for the three Federal usury preemptive statutes was because of extremely high interest rates. I would simply say, sir, in my opinion, that if we should approach a situation of 1979 and 1980 again because of the questions that exist today and which Mr. Hudson has certainly amplified with these VA and FHA comments, there would be zero financing available for manufactured housing.

Senator **Gorton**. If interest rates go back up to the level they were at that time?

Mr. **Ehrle**. Yes, sir. Let me also comment, sir——

Senator **Gorton**. I think you've already said this—we have not had a drying up of credit after the cases involving GECC, Citicorp, and Barclays, but the reason for that is that interest rates are lower?

Mr. **Ehrle**. That's correct. Mr. Chairman, let me also point out the VA and FHA usuary preemptive statutes expressly included mobile homes and manufactured housing. Mr. Hudson is wrong. Section 501 was not the first act that applied to manufactured housing. That's an incorrect statement. Both of these expressly refer to the—the VA and FHA refer to mobile homes.

Senator **Gorton**. In your view, could we not attain all of the prospective benefits on credit availability from this proposal simply through instructing the Bank Board to issue model forms?

Mr. **Ehrle**. I think from a prospective standpoint with reference to the section 501 preemption, that could be accomplished through the Bank Board. It would not solve the VA and FHA conflicts which Mr. Hudson has raised.

Senator **Gorton**. Senator Dodd, do you have an opening statement or questions?

Senator **Dodd**. Let me express my apologies to the four of you for not being here to hear your testimony. I thank you for coming before the committee and I thank the chairman for these hearings.

Let me begin if I can with Mr. Hudson and Mr. Fox. I'll try and do this in my own mind at least to deal with the borrowers and then come to the lenders and ask you both different questions.

I think the chairman has addressed a couple of the questions that I would have raised, but, Mr. Fox, you say that most lenders have complied with the law.

What did they do in their contracts that was different from what other lenders have done?

Mr. **Hudson**. They did not reserve for themselves collection remedies on default which are prohibited by the Bank Board regulations. It's that simple.

ILLEGAL CONTRACTS CONTRADICT WHAT THE RIGHTS ARE

Senator **Dodd**. Do you agree with that, Mr. Fox?

Mr. **Fox**. Yes, that's correct. The contracts could presumably either affirmatively state what the rights are and state them properly. As one court of appeals has ruled, the contract could be silent on those rights. But the only types of contracts that have been found to be illegal are those where the contract expressly contradicts what the rights are.

Senator **Dodd**. Well, just on that point, Mr. Ehrle and Mr. Evans, do you want to comment at all on that?

Mr. **Evans**. Well, I discussed and have submitted, Senator Dodd, a copy of the offending provisions from some of those contracts, some that survived the scrutiny of the court and some which are under scrutiny and some which Mr. Hudson says are exemplary, and I leave it to you as the formulators of public policy whether or not on the very slight differences in wording in any of these should cause the possibility of a $96,000 penalty when the act is very clear that it does not require disclosure, the Federal Home Loan Bank Board did not require disclosure, and the courts say that disclosure is not required.

But that if you put in your contract an essential element to that contract, which is the acceleration clause, somehow this triggers a need to disclaim any potential interference with a subsequent or other right of the borrower to receive a notice if and when you take an action to foreclose.

The court could have read those two together, but 6 out of 11 chose not to. It is that close. The courts have split very badly on this and in one case upheld one company by a vote of 8 to 3 and split 6 to 5 on another.

My question is: If it's that difficult for the courts to figure out what's going on here, have we really given the creditor, the courts, and the consumers the kind of effective legislation which will carry forth a very desirable public policy? A policy, which as I pointed out earlier, resulted in about $4 billion of new mobile home credit during 1981 and 1982. When the banks, the savings and loans, and the credit unions had a net liquidation, the companies that are the subject of the attack in these suits and this testimony here put out actually $4 billion in new credit. A lot of homes were sold. A lot of jobs were preserved and at a very modest cost really, despite the claims that these interest rates are excessive. There's about a $50 difference in the monthly payment.

Also, Senator Dodd, may I just point out here that on conventional housing here in Washington, I remember rates of 14 and 15 percent at the same time with as many as 15 points, which were nonrefundable upon refinancing. $15,000 on a $100,000 loan was common around here, and that's on conventional housing.

Senator DODD. Fifteen points?

Mr. EVANS. Yes, 15 points, as high as 15 points were being charged on some conventional loans. We forget quickly, but conventional———

Senator DODD. I'd love to know where those exist. I've been in the market looking for mortgages and nobody even suggested that to me.

Mr. EVANS. No, that was in 1981 and 1982. That appeared in a Washington Post article by Paul Hardy.

Senator DODD. You're talking about 1981-82?

Mr. EVANS. Yes. Not now. And our rates come down comparably, the rates that were mentioned earlier by Mr. Ehrle are the rates—14.5 percent is fairly common for the same group of lenders.

Mr. EHRLE. Senator, may I respond to the question also?

Senator DODD. Yes.

Mr. EHRLE. My answer will be very short. Thirty-day notice is required in section 501. Under the FHA regulations, only a 10-day notice and right to cure is required. Those are the kinds of problems that exist with regard to contract language and my major point is that it's imperative that Congress now tell us what was intended because of the three acts related to manufactured housing—VA separately, FHA, and then the general usury preemption. Those are serious questions that Congress needs to help us with.

Senator DODD. Well, let me move on if I can. I appreciate your comments on that and if Mr. Hudson and Mr. Fox in response to the next question want to come back and comment on that I'll give you a chance to do that as well so we'll get a little dialog here between you.

Mr. Fox, in your testimony you discuss a limited number of cases to which these problems might apply and the fact that specific injury was alleged in all cases. If you assumed that the amount involved on a $20,000 mortgage that would be about $40,000. If there are 10,000 people that might get into these cases, then we would be talking about approximately $400 million. I would assume that most of those 10,000 people would not have suffered actual foreclosure.

Would your views as to the implications of this matter change if these figures were in the correct ballpark?

Mr. Fox. I think those are closer to the correct ballpark than the $12 and $15 and $20 billion figures that have been cited, not here today but in another forum.

I guess I believe that those consumers have their right to have their day in court and if the harm that's been caused if violations are found, that's the remedy that Congress and their State legislatures have deemed is appropriate.

CONGRESS WAS DELIBERATE ON CONSUMER RIGHTS

There is no other—that set of remedies was not applied accidentally by Congress. We think Congress knew what it was doing then, that it was trying to discourage the type of confusion about consumer rights that some of these contracts have established.

Senator Dodd. Those numbers are approximately the actual figures to the best of your knowledge?

Mr. Fox. Well, my understanding is that there may be as many as 7,500 members or 10,000 members perhaps of the classes involved with those contracts in the States where there's been a challenge, but my understanding as well is that there probably has not been a class certified. If that's incorrect, I'd like to be corrected on it. We just don't know what's going to happen as a result of those cases.

Senator Dodd. I understand that but I'm talking about looking at the maximum potential exposure.

Mr. Hudson. The only way we could know what the maximum potential exposure is would be if the trade associations disclosed to Congress how many lenders used particular forms and in what States and what the State law penalties are in those States, and that hasn't been done.

One pending court case decision has been in their favor, so we exclude those from the calculation. But those that have been found by courts to be not entitled to preemption would be about $92 million, unless the violations were willful and we have not attempted nor do we know at this time whether we could show they're willful violations.

Those penalties in Georgia as we mentioned earlier are very similar to what you have in the State of Washington, for example, for its consumer credit laws. In the State of Washington you lose twice the amount of the illegal interest that's already been paid plus the remainder of the illegal interest that hasn't been collected plus costs and attorneys fees.

I think in Connecticut it's just the loss of the finance charges. We haven't surveyed all of the laws, but in most States this is the way the usury statutes operate. When Mr. Ehrle testified in February 1980, asking for these preemption laws to be put into the bill for mobile homes he stated in his testimony that if these protections are not given to the purchasers these contracts would be subject to attack under State law. So they've known all along what would happen and anybody—a first year law student could read the form contract and read these regulations and know how to write it that complies with the law. It's easy to do.

I would suggest to the committee that it would be interesting to see the type of contracts they've written since this litigation has been instituted. I would venture to say that they have changed their contracts to comply with the law. There's really no problem in doing so and they would have been foolish if they had not by now and I suspect that they have.

Senator DODD. Well, what about that, Mr. Evans?

Mr. EVANS. Well, I think Mr. Hudson evinces supreme self-confidence, to say the least, in this area.

Senator DODD. Let me just ask you—I'm going to come back to that but let me just ask you about the numbers because there is testimony to the effect that this exposure may be $12 to $15 billion.

Would you and Mr. Ehrle address the point Mr. Fox and Mr. Hudson just made with regard to the exposure question, and then I'd like to ask you about the contracts.

Mr. EVANS. Answer on the numbers question, Senator Dodd?

Senator DODD. Just to give us some sense of the number.

QUILLER CASE

Mr. EVANS. Well, let's just take the one case we had on the record here, the *Quiller* case. If the error is held to be intentional, it has a potential damage of $92,000. A third of that is a forfeiture of the finance charges that were contracted for plus a penalty of twice that amount which would have to be paid them if it's found to be intentional.

Let me say this. There is no doubt that it will be found to be intentional. It is a common rule of law in this land that when you write your contracts lawyers are intended to do exactly what they did and the courts will find that all these errors are intentional.

Take 7,500 cases and just take $80,000 and you run up to about $600 million right there. I'd say on the 7,500 cases he has, if there's an $80,000-average potential, there's $600 million right there. I think that will have an effect on the cost of credit and availability in Georgia anyway of mobile home financing.

Senator DODD. Let me come back to the point that Mr. Hudson made. My time has expired.

Senator GORTON. You go right ahead.

Senator DODD. Let me just ask this last question on the question of the contracts. Have you changed the contracts, Mr. Ehrle or Mr. Evans?

Mr. EVANS. I haven't seen contracts done by our members, but I imagine they have tried to accommodate the various rulings of the courts as they rolled along.

Senator DODD. Well, there have been a number of different rulings, though.

Mr. EVANS. It's a pretty chancey thing to try to keep up with them.

Senator DODD. I understand that. Maybe if I could ask if you could help because it's obviously an important point if we could get some copies of the contracts, ones that were—and I would ask you and Mr. Ehrle to provide them to us, and if Mr. Hudson and Mr. Fox would also like to submit some, I think we ought to get them from both sides. The operative dates would be in terms of predetermination of those cases and then postdetermination of those cases. What those actual dates are I'm not sure, but I think you all probably get the drift of what I'm driving at. I'd like to see them to compare the language.

Mr. Hudson. Senator Dodd, we will try. We don't have any mechanism to get them, but if some are submitted, is there a procedure where we may be furnished with copies of what are submitted to the committee?

Senator Dodd. Well, I presume you represent people who borrowed and they would have copies of some of those contracts, wouldn't they?

Mr. Hudson. Well, we're not in a position, because of the class action status, to go out and solicit for contacts with class members. We're barred by court order from doing that, as all lawyers are in class actions.

Senator Dodd. Well, maybe the committee can figure out a way to do that.

Mr. Hudson. We will try.

Senator Dodd. OK.

Mr. Ehrle. Mr. Chairman, we will be glad to furnish copies of contracts, sample contracts, from companies that do comply with section 501, also that comply with FHA and with VA.

The major point that we're making today is——

Senator Dodd. I understand that.

Mr. Ehrle [continuing]. The compliance there may vary.

Senator Dodd. You made the point very well, Mr. Ehrle. I would just like to be able to compare what the printed form contracts look like predetermination of those cases and postdetermination.

Thank you, Mr. Chairman.

Senator Gorton. Do you have any more questions? I do not. If you have any more that you want to ask, go ahead.

Senator Dodd. I have a couple.

Senator Gorton. Go ahead.

Senator Dodd. Let me ask Mr. Evans or Mr. Ehrle—I'll let you respond first to these questions and then have Mr. Hudson and Mr. Fox if they care to pick up retort.

LENDERS—ACTED IN GOOD FAITH

One of your bases for seeking relief is that the lenders acted in good faith. Yet, Mr. Evans and Mr. Ehrle, witnesses for the borrowers point out that no S&L lenders or bank lenders failed to comply with the Bank Board regulations.

Doesn't this fact or this testimony undercut your contention of good faith? How would you respond to that? I'm sure you have, but how would you respond to that?

Mr. Evans. Well, merely alleging—and that's all it is—merely alleging that something doesn't exist doesn't mean anything. There's no substantiation offered for that comment. It doesn't mean that there are not contracts—I pointed out earlier that one of the banks whose form is held up as exemplary by Mr. Hudson—that I wouldn't have much trouble going into court and arguing under the very rationale of these decisions that it was misleading. He hasn't seen fit or hasn't found anybody willing to be part of his class on that contract, but there are plenty of opportunities. I have submitted extracts from all these forms and I think if you read them for yourself you will see that people of good will and expertise can differ on how they approach things, and there are errors in every one of these that could be challenged technically.

Some people to give the notice upon default. That's not the requirement of the law and I doubt that those companies are actually doing that. A default is when you don't make your payment on time. But the law doesn't say that you have to send a notice out on every default and yet some of these are written "on default." And it's just incredible. It's too complicated.

But there has been a good faith, determined effort in every case to qualify the language, the acceleration language, with some reference to the right to cure. Every one of these has made an attempt in the form to do that.

Senator DODD. I'm sure you've looked at the—you're not just familiar with your own cases but I presume you're familiar with what's going on in the judicial system as a whole with regard to these matters.

What is the experience within our courts? Have S&L's and bank lenders been—are there a lot of cases pending with S&L's and bank lenders? There must be some—that would I think assist your case if you were to say to me that in fact there are other institutions that are having similar problems, that would certainly enhance your argument that this is a source of great confusion and we need to straighten it out. If there's not, certainly as a civilian in this matter, I would begin to wonder if there isn't some unique problem occurring with finance companies as opposed to S&L's and banks.

Mr. EVANS. Well, let me just say this. No; I don't know of any broad scale or even any serious attempt—some of our members may know of challenges elsewhere. There will be no doubt in my mind that this thing, once it's finalized by the court, if it's in the present fashion, that cases will spring up involving banks and savings and loans as well as finance companies. Bear in mind that many of our finance company members have not been challenged and Mr. Hudson agrees that their forms comply quite well.

Senator DODD. Mr. Ehrle, do you want to comment?

Mr. EHRLE. Yes, sir. When you say banks and S&L's, Citicorp Acceptance is, of course, very closely allied with a bank. Also, Fort Wayne Mortgage Co. is a wholly owned subsidiary of a savings and loan.

Let me simply say for the record, Senator, the questions are there with regard to S&L and bank contracts. There is no question about that. It's not that banks and S&L's march to the tune of the good drummer and a few dissidents over here fail to comply with the congressional or Federal statute. That's simply not the case.

Similar types of questions exist in bank and S&L contracts across this country.

Mr. EVANS. Senator Dodd, I was given a note here that says that the only cases that we know of that have been brought are the ones brought by the law firms involved in these cases and throughout Georgia, North Carolina, and I believe in South Carolina—I'm not sure of that—but they are a very active class action firm and that has been—they have about 17 class actions involving this situation right now underway. I believe only one class has been certified so far, but these other issues have gone up on motions for summary judgment before the class action has been certified.

CORE OF ACTION IS IN GEORGIA, NORTH CAROLINA, AND SOUTH CAROLINA

But this is the core of the action right down in Georgia and the neighboring States. They're waiting to see what's going to happen.

Senator DODD. Mr. Fox and Mr. Hudson, do you want to respond to that?

Mr. HUDSON. Senator, there's really no way at this point that anybody can say whether the lenders attempted to comply in good faith. We have tried to get into that issue in the *Citicorp* case and have been met with appeals and objections and because of the posture of the case we have not been able to conduct any discovery as to how that company came to draft its contract as it did, what its motives were, was there any attempt to comply with preemption, were they trying to give lip service to preemption and yet collect a higher interest rate?

The bottom line is there's been no testimony under oath, exposed to cross-examination as to how these finance companies got into the situation they did.

In addition to the cases that we've been involved in, there's been a case of the Sun America Finance Co. that we were not involved in. It went to the Georgia Court of Appeals. Its contract was held to comply with the Federal preemption rules and thus entitled to preempt Georgia interest rates. So there are other cases.

But we simply have not seen—and we follow the reported cases very closely—where anybody has made these types of challenges against a bank or savings and loan contract, and none have come our way in the course of our everyday law practice.

Senator DODD. Let me ask you this and I'll ask Mr. Fox as well to respond. What about Mr. Evans' claim, that this is basically a Georgia-North Carolina-South Carolina problem? Why aren't we hearing about cases all across the country if this is a nationwide problem.

Mr. HUDSON. To the limited extent I'm able to respond to you, I can this way. I know that in half or so of the States you will not ever have any cases like this because they did not have interest rate ceilings. There will never be any cases there. As for the other States, I have no way of knowing what finance companies did business there and what types of contracts they used. They could be like the lenders that we have found and submitted copies of their contracts in the appendix; they use contracts that lawfully entitle those lenders to preempt State interest laws.

This theory has been reported in the Federal Reporter now for 18 months or so and it's also been circulated in the trade publications, so any lawyer that was looking for a type of theory to use in a lawsuit has had ample opportunity to know about it. It would be speculation for anyone to say why there are not other suits in other places.

Senator DODD. Mr. Fox.

Mr. Fox. We hear first of all that this is a broad national problem and second it's only being caused by this one handful of attorneys in one town in Georgia. I think those are contradictory statements that the industry representatives are making and the second statement is probably closer to the truth, that there simply is not a broad national problem. There is a problem with a small number of lenders involving contracts in just two or perhaps three States. As Mr. Hudson has said, there are a number of States where this issue just will not ever come up.

Delaware has no usury ceiling. A mobile home lender does not have to observe the protections in the Federal override because a contract that otherwise followed Delaware law could charge any rate of interest. There's no such thing as the ability to make the usury challenge there.

Several other States—I believe Kansas is one of them—specifically overrode the Federal preemption. Lenders in Kansas are not entitled to take advantage of the Federal preemption and they are only governed by State law. There is no question of whether there's some sort of interplay between the Federal preemption and the State law.

There may be as many as 27 States where one or both of those factors are in play. That seriously limits what the exposure is. There are a number of other States—and we have not been able to identify the status of the laws very accurately—where the interest rate ceilings are sufficiently high enough, although there are ceilings, that it's hard to imagine that any lender in the last couple of years has issued a contract with a rate of interest that would violate the State law. If I'm not mistaken, Connecticut may be one of those States. I believe the interest rate ceiling in Connecticut is 18 percent.

Senator Dodd. Yes, it is.

Mr. Fox. And you have a situation where the lending is going on now at 14.5 and 14.75 percent. As I look at the average rate, it's probable that there has not been a single—or there have been very few contracts in the last 3 years in Connecticut that have been over 18 percent.

It's a limited problem. It's being dealt with by the courts with some discrimination and with some sensitivity and that's where it ought to be handled.

Senator Dodd. I was going to ask about actual foreclosures, Mr. Evans and Mr. Ehrle, but I think for the committee here one of the questions would be the amount in controversy. We spend a lot of time sometimes on amendments that are worth a couple million dollars on the floor. In fact, the other day I think we spent about 4 hours. I think it probably cost us a lot more to debate the amendment than it would have cost us to do what the amendment was calling for. But obviously, that is important. We're not likely to be writing legislation, particularly if it appears as though this may be a problem that's correctible by commonsense interpretation of the law, which you've argued is not easily done, Mr. Ehrle. I heard you very loud and clearly.

BALLPARK FIGURE OF BETWEEN $12 AND $15 BILLION

I'd like to get your views as to how much realistically is at stake. I asked that question before. You have indicated potential numbers here, but I'd like to get a better ballpark figure on what you actually think is involved.

Let me ask Mr. Ehrle and Mr. Evans first.

Mr. **Ehrle**. Senator Dodd, between 1980 and 1984, there was—and the variation here is because of the possibility of not having it all reported—there was between $12 and $15 billion in finance charges relating to the financing of manufactured homes. Now that was across the country as a whole. So I think we have to work from there back.

If 50 percent of the States would not be involved, obviously reduce the number by 50 percent and so forth and so on. Then there will be contracts that can comply——

Senator **Dodd**. Not necessarily. I mean, you've got California, New York, and Texas and those are only three States, but I've got to believe that the volume——

Mr. **Ehrle**. That's correct. The volume, of course, in some States is substantially greater.

Also, let me point this out. Let's take the $15-billion figure. Again, back to VA and FHA, we're talking about $2.25 billion involved across the country and if Mr. Hudson is correct in his argument that section 501 just zapped these two preemptions in the consumer regulations that already existed, we're talking about $2.25 billion across the country which could well be involved.

Senator **Dodd**. But I heard Mr. Evans—and I'm not being argumentative—that this was pretty much localized to Georgia, North Carolina, and South Carolina.

Mr. **Ehrle**. It will not be if Mr. Hudson is correct in his FHA-VA argument, Senator. Thus far, those are only allegations. There's not been a court decision. But if he's correct in his VA and FHA arguments and allegations, we're talking about Ginnie Mae being in serious difficulty with all of its manufactured housing.

Senator **Dodd**. What are we talking about as existing pending matters in controversy as opposed to the potential exposure with the FHA and VA?

Mr. **Ehrle**. I can't respond with regard to the actual matters in controversy since we're not involved with this particular matter, Senator.

Senator **Dodd**. Mr. Evans.

Mr. **Evans**. All I did was take Mr. Hudson's figures, Senator Dodd, and I took a lesser amount—$80,000 times 7,500—and I think it comes around $600 million. There are a lot more than that out there. There are cases waiting in North Carolina. I know that. I don't think it would be too difficult to come up with a couple billion dollars.

Senator **Dodd**. I'm sorry.

Mr. **Evans**. I don't think it would be out of line to surmise here—and that's all it would be—that it would be at least a couple billion dollars and it may go much higher. But without an exhaustive study of every State where this could possibly be raised and where lenders were in the same situation and looking at all the contracts, we wouldn't know. I guess the real question is: Should this be possible in any event under any amount?

Senator **Dodd**. Mr. Hudson and Mr. Fox, first of all, you may have addressed the FHA and VA question, the allegation that Mr. Ehrle just mentioned about your argument that those also would be included.

AMOUNT IN DISPUTE IS ABOUT $93 MILLION

Mr. **Hudson**. All right, sir. As to the amount in dispute, at pages 19 and 20 of our written testimony we have calculated the amount that is in dispute, about $93 million, assuming that the violations were not willful. And that is a $93 million stream of income over 15 years. What that would be discounted to the present value would be considerably less. What the settlement value of the cases are if they wanted to do what is legal now, it would be considerably less.

Beyond that, for any of us to posit a figure would be speculation. FHA and VA, to that extent, I know of at least two cases in Georgia. On one of the form contracts Mr. Ehrle makes the argument that there was no intent on the part of the VA or FHA lenders to comply with preemption, but it's strange in the Southern Guaranty contract they twice refer to consumer protections that are provided only in the Bank Board regulations under the 1980 act but then on the flip side of the contract they take action—or reserve for themselves the right to take action prohibited by those regulations. So the VA and FHA lenders knew that they had to comply with the 1980 Preemption Act but they just didn't do it and that's evidenced on the face of the Southern Guaranty contract.

There are two cases. Whether other lenders across the country tried to give less in consumer protections than required by the law would be sheer speculation for any of us to say.

Senator **Dodd**. Mr. Fox.

Mr. **Fox**. As I indicated earlier, I've not had a chance to look at the VA-FHA issue, so I'll not be able to respond at this point.

As to the amount at controversy, I think it would also be useful to calculate what it is that the lenders have received from consumers in this country over the past 5 years due to their ability to charge interest rates that are above State ceilings. I think that might place the amount of $90, or $400, or $600 million or whatever it is in its proper proportion.

The fact is that Congress in 1980 gave the lenders the right to ask from consumers several billion dollars more in finance charges than they would have otherwise been entitled to. Most of that money is simply not in dispute at this point. The lenders have complied with the law that allowed them to do it because they offered consumers, as required by the law, a tradeoff in exchange for being able to collect that many billions of dollars.

Given that context, I think the amount of money that's at controversy is relatively small.

Senator **Dodd**. Well, I thank all of you for your testimony here this morning and if I have any additional questions we can submit them to you in writing.

Mr. Chairman, I thank you.

Senator Gorton. Thank you, Senator Dodd.

We will submit additional questions in writing as well, as will Senator Mattingly, who regrets his inability to be here today.

Before I adjourn this hearing however, I would like to thank you for being willing to take part in one single panel which certainly made this more interesting and more informative to the members here. And I should also like to pass on to all of you the statement which was made to me by a member of the staff before the hearing that you all have been very, very cooperative in helping us find a correct answer to this problem. They appreciate it and we appreciate it very much. We thank you very much.

[Whereupon, at 11:15 a.m., the hearing was adjourned.]

[Response to written questions of Senator Mattingly and additional material supplied for the record follow:]

LAW OFFICES
HULL, TOWILL, NORMAN & BARRETT
A PROFESSIONAL CORPORATION
SEVENTH FLOOR FIRST NATIONAL BANK BUILDING
AUGUSTA, GEORGIA 30913

JOHN BELL TOWILL
ROBERT C. NORMAN
WM. HALE BARRETT
LAWTON JORDAN, JR., P.C.
PATRICK J. RICE
DOUGLAS D. BATCHELOR, JR.
DAVID E. HUDSON
CHARLES W. ROWELL IV
NEAL W. DICKERT
JOHN W. GIBSON
GAIL DUFFIE STEBBINS
GAIL C. ARNEKE
WILLIAM F. HAMMOND

WILLIAM HALE BARRETT
1866-1922
GEORGE B. BARRETT
1894-1942
JULIAN J. WILLINGHAM
1887-1963
JAMES M. HULL
1885-1975

P. O. BOX 1564
TELECOPIER (404) 722-9779
TELEPHONE (404) 722-4481

FEDERAL EXPRESS

November 19, 1985

The Honorable Slade Gorton
United States Senate
Committee on Banking, Housing
and Urban Affairs
Washington, D.C. 20510

RE: Mobile home oversight hearings

Dear Senator Gorton:

In response to the written questions from Senator Mattingly, we enclose the following. We thank you for this opportunity to further supplement the record of the hearings.

I must also take the opportunity of this letter to advise you of another distressing development. Because your Subcommittee made inquiry about other examples of lender misconduct and actual harm suffered by purchasers, we filed a motion with the District Court for permission to communicate this inquiry to the 3,500+ members of the Citicorp class. This is the only case in which class action notices have gone to the purchasers and thus procedures are in place for contacting the class. Citicorp has responded and a copy of its response is attached as a part of our written answers. Not surprisingly, Citicorp opposes any notice to the class members that the Senate has made these inquiries. It does not want anyone to know how it was conducting its affairs before it was "caught" and ordered to stop by the District Court's injunction of August 27, 1984. We hope that you and your committee will draw the same inference which we do from Citicorp's position on this request: Citicorp has much to hide.

We would also like to know if it would be possible to receive copies of any additional submittals by the finance companies and to be kept advised of the status of the proposed legislation. Thank you in advance for any assistance you or your staff can give us in this regard.

Respectfully,

David E. Hudson

DEH/nhb
Enclosure

cc: John B. Long, Esq.
Thomas W. Tucker, Esq.
Jay M. Sawilowsky, Esq.

IN THE UNITED STATES SENATE

BANKING, HOUSING AND URBAN AFFAIRS COMMITTEE

FINANCIAL INSTITUTIONS & CONSUMER AFFAIRS SUBCOMMITTEE

Honorable Slade Gorton, Presiding

November 1985

IN RE: Mobile Home Financing Legislation S.L.C. Draft No. 089910.415	))))	RESPONSE TO WRITTEN QUESTIONS

DAVID E. HUDSON
HULL, TOWILL, NORMAN & BARRETT, P.C.
POST OFFICE BOX 1564
AUGUSTA, GEORGIA 30913

JOHN B. LONG
NIXON, YOW, WALLER & CAPERS
1500 GEORGIA RAILROAD BUILDING
AUGUSTA, GEORGIA 30901

THOMAS W. TUCKER
DYE, MILLER, TUCKER & EVERITT
POST OFFICE BOX 2426
AUGUSTA, GEORGIA 30903

Attorneys For 7,500 Mobile Home
Purchasers

QUESTION 1: Is this just a problem of the finance companies not getting their paperwork correct?

Absolutely not. It is also a situation in which the finance companies have engaged in illegal conduct. Because the current cases have all involved rulings on the pleadings without any discovery, we cannot yet tell how widespread the misconduct is. What we do know is that if the proposed bail-out legislation passes, the finance companies will use it to prevent any attempt to discover all of their wrongdoings.

From the limited information available to us from mobile home purchasers who have contacted us, we do know of the following.

(a) From affidavits and hearings conducted in the summer of 1984, we know that Citicorp collection employees took action to repossess mobile homes and to accelerate the debts without 30-day notices and without 30 days for the borrowers to cure default. Appendices B and C to November 6, 1985 testimony. We have also seen that Citicorp has gone through the motion of sending out a 30-day notice in North Carolina, but then sold and repossessed the mobile home within the 30-day period. See Appendix D.

Even after the United States District Court for the Southern District of Georgia ordered Citicorp to follow the consumer protections in the Bank Board regulations pending resolution of the lawsuit against it, Citicorp employees continued to take and threaten action against purchasers inconsistent with their 30 day rights to notice and the opportunity to cure. See Appendices F and G.

(b) We also know that Citicorp routinely cheated mobile home purchasers who asked for or received a payoff figure for the balance of their mobile home debt. The Bank Board regulations required that unearned finance charges be rebated at least by the actuarial method. We know that Citicorp has not done so. See Appendix E. It is also known that Citicorp is assessing a $5.00 late charge on contracts in less than 15 days required by the regulations. Appendix E. We also know that Citicorp has falsely advised all of its borrowers as to the amount of finance charges paid within a given year for income tax purposes. In other words, Citicorp is understating interest to borrowers for purposes of the borrower's income tax deductions, and at the same time understating to the Internal Revenue Service the amount of interest income earned. Appendix E.

Another flagrant example of Citicorp misconduct concerns the repossession without notice of the Thigpen mobile home. This home was repossessed while the account was current. Appendix F. In defense of the repossession of the Thigpen home, Citicorp filed an affidavit in the United States Court by its Atlanta collection manager, Mr. Jack Ohlin. In that affidavit, he stated that the home was delinquent when it was repossessed in early December, 1984. Since that affidavit, the trial court has required Citicorp to produce the account card for the Thigpens. It shows unmistakably that the mobile home was paid current through December 20, 1984. Appendix F. This confirms that the repossession was unlawful and furthermore that the testimony of Citicorp employees is not believable.

If given the opportunity to proceed with these cases and to conduct discovery in accordance with the Federal Rules of Civil Procedure, plaintiffs are confident that they can show that the misconduct of Citicorp was not isolated but was system-wide. The use of form contracts and standardized collection procedures makes it highly unlikely that what we have discovered thus far was isolated misconduct.

(b) Another lender for whom we have been able to obtain some evidence showing misconduct is BarclaysAmerican/Credit, Inc. In regard to the Quillers, Barclays used a 20-day notice of default where the regulations require 30. 12 C.F.R. Section 590.4(h). It then told the Quillers that they would receive no notice in the future. Bank Board regulations require the 30-day notice to be given twice in any year. On a second default, Barclays attempted to repossess without any notice and demanded payment of more funds than permitted by 12 C.F.R. Section 590.4(c). Appendix A. We believe that when we are allowed by the courts to conduct further discovery concerning Barclays, we will find that its pattern and practice was to violate regulations at the time it was charging more interest than permitted by state law.

CONCLUSION: The finance companies argue to the Senate that any misconduct on their part was inadvertent and isolated. There is only one way in which we will ever know if that is true. That will be if the lawsuits continue and we are able to require the finance companies and their employees to respond under oath and produce documents which will show how they in fact conducted their business.

From what we know thus far, we believe that the illegal conduct will be shown to have been the regular mode of operation by these lenders. However, if the proposed legislation is passed, the lenders will use it as a defense to class certification and class discovery and it will be almost impossible to learn the truth.

QUESTION 2: To the extent that interest rates are illegal under state law because the paperwork is not correct, would it be appropriate for legislation to be passed requiring the finance companies to correct the paperwork now?

It is important to put this matter in perspective. There is nothing contained in any of the contracts which we have seen which could not have been remedied by changing just two digits - the rate of finance charge. None of the collection remedies, none of the default provisions, none of the rebate provisions are unlawful except when the state limits on finance charges are exceeded. If the finance companies were serious and above board in their approach to Congress, they would ask for legislation to allow them to now put the interest rates back at what would have been legal limits and refund the illegal portion which they have collected in the meantime.

Instead, the finance companies want to continue to collect finance charges which are illegal because the contract documents did not comply with the federally mandated consumer protections under Section 501(c) and the Bank Board regulations.

The defects in the finance company contracts are not inconsequential or technicalities. The finance companies simply reserved for themselves collection remedies which the law prohibited for transactions where finance charges exceeded state law limits.

For example, in the Barclays contract, this language appears in the security agreement portion:

> *If customer defaults on any obligation* under this contract, *or if holders shall consider the indebtedness or the collateral insecure, the full balance may, upon election of holder, without notice, subject to any notice or right to cure, become due and payable*, less the required rebate of the finance charge, ... Customer agrees in any such case to pay said amount or, at holder's election, to deliver the collateral to holder, *and*a *the holder may, without notice or demand for performance or legal process, peaceably enter any premises, but not into any dwelling, where the collateral may be found, peaceably take possession of it and custody of anything found in it*. (emphasis added).

There is simply no way that this language, which allows the actual hauling away of a person's home without notice, can be justified in light of the Bank Board regulations which require that customers be given 30-days notice before any action is taken to repossess, accelerate or foreclose. 12 C.F.R. Section 590.4(h).

At the hearing on November 6, 1985, Southern Guaranty was one of the lenders specifically mentioned by the representatives of the finance companies. The Southern Guaranty contract which is at issue in the lawsuit contains the following remedies for the finance company:

> If buyer shall default in the payment of any installment due hereunder, or shall fail to keep any agreement or covenant made herein, . . . the seller or its agent may declare all amounts due hereunder, to be immediately due and payable and shall have all of the remedies of a secured party under the Georgia Uniform Commercial Code, to the extent consistent with local laws where enforced. Said remedies include, without limitation thereto, the right to take immediate possession of the collateral without notice or demand, or process of law or otherwise; and for that purpose the seller may enter upon any premises on which the collateral or any part thereof may be situated and remove the same therefrom to any place the seller

> may desire without liability for trespass.
> (emphasis added).

Is it any wonder that courts have refused to allow interest rate preemption under such a contract in light of regulations which require all actions to accelerate, repossess or foreclose be preceded by 30-days notice and 30 days within which to cure a default?

Fort Wayne Mortgage Company was also mentioned at the hearing. Its form contract contains the following:

> Upon the happening of any of the following events or conditions: (a) default in the payment of said indebtedness or in the performance of any of the obligations of buyer under this security agreement; . . ., thereupon, at any time thereafter (such default not having been previously cured) seller, at its option, may declare said indebtedness to be immediately due and payable and it shall have all the remedies of a secured party under the Uniform Commercial Code, including without limitation, the right to take possession of the collateral by any lawful means and to sell the same, and for that purpose seller

> *may enter upon any premises on which the collateral may be situated and remove the same to such other place as seller shall determine*. (emphasis added).

Like the other contracts at issue, these documents reserve for the finance companies remedies that they simply cannot have and be entitled to preemption. It is simple and straightforward.

The purchasers are paying the highest rates of interest of anyone in the United States and except for their rights under state law to obtain relief from unlawful finance charges, they have no way out. Persons who purchased conventional homes during times of high interest have been able to refinance. Mobile home borrowers cannot as their collateral depreciates. No one will loan them enough money to refinance their current principal balances with just the mobile home as security. The mobile home is never worth enough to secure a new loan.

The borrowers who used illegal contract forms are receiving a windfall. They are collecting finance charges to which they are not lawfully entitled. The present lawsuits have uncovered the illegal conduct and illegal contract documents and have given these purchasers a means by which they can obtain relief against some of the greedy finance companies. The finance companies argue that they were doing the public a great service by loaning money when no one else would. This is nonsense: they were overreaching. The highest average interest rate on conventional home loans in recent years was 14.5% in 1982. Treasury obligations maturing in fifteen years were at 13.15%. Wall Street Journal, Feb. 23, 1982, p. 52, col. 4. There was simply no reason other than to make as much profit as one could for finance companies to charge 18-20+% on these loans. They are entitled to no sympathy and no relief.

QUESTION 3: Was there anything to alert finance companies of the need to draft their documents with care?

There was ample warning to the finance companies that they needed to be careful.

Their own trade group, the Coordinating Council on Manufactured Housing Finance, testified before the House Committee on Banking, Finance and Urban Affairs on February 21, 1980. In that testimony, the finance companies requested Congress to enact a statutory scheme quite like what is found in Section 501(c). In regard to the consumer protections which would have to be afforded in a contract, Mr. Early testified as follows at pages 25-26:

> With this suggested amendment, loans and sales utilizing the Rule of 78s would not qualify for the exemption, nor would loans or sales failing to incorporate appropriate purchaser protections drawn from the traditional real estate mortgage field. (emphasis added).

He said it as well as could be stated. If the loans failed to incorporate the protections, they would not qualify for the exemption from state limits on finance charges. The text of Section 501(c) follows just that suggestion and states that there will be no preemption for loans whose "terms and conditions" do not comply with the consumer protection provisions.

In the House Conference report on the bill, it was clearly stated that "manufactured home financing is covered by the mortgage usury preemption as long as such finance complies with the consumer protection provisions specified in the regulations of FHLBB." House Conference Report No. 96-842. Nothing could have been clearer.

In adopting the consumer protection regulations, the Bank Board twice warned that loans which did not comply would be subject to attack under state usury laws. 45 Fed.Reg., page 31122 (May 12, 1980); 45 Fed.Reg., page 43681 (June 30, 1980).

Many finance companies complied with the law and drafted their contracts consistent with the consumer protection provisions required by the Act and the Bank Board. The ones which we have found that did not certainly could have. They are sophisticated companies who know how to draft their contracts to include every provision imaginable to use against the debtor if he defaults. They are companies which hire skilled legal and investment banking talent whenever they wish to market stocks or debentures. They pay for excellent legal and accounting advice to minimize what they must pay on their federal tax returns. Let us hope that no one falls victim to the claim that these companies were unable to comply with this three page law and the set of regulations which followed.

SPECIAL NOTE:

At the hearing on November 6, 1985, members of the Committee asked the representatives present for other examples of lender misconduct and actual harm to purchasers. We immediately filed a motion with the U. S. District Court for permission to mail inquiries to the 3,500 purchasers in the Citicorp case. They are the only purchasers who thus far have been advised by the Court of the pending litigation.

Not surprisingly Citicorp has now opposed any attempt to give these purchasers an opportunity to respond to the Senate. A copy of Citicorp's opposition papers are attached hereto as Appendix I. It must be noted that the monitor only received complaints of Citicorp's conduct after Judge Bowen's injunction of August 27, 1984. Appendix C. This was after Citicorp was "caught." Citicorp does not want anyone to know what it was doing before then.

Respectfully submitted this 20 day of November, 1985.

DAVID E. HUDSON

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AUGUSTA DIV.

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IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF GEORGIA

AUGUSTA DIVISION

WHILDON L. MOYER, BEVERLY E. MOYER, GEORGE W. HARRISON, JANIE W. HARRISON, EVERITT M. SANDERS, BRENDA SANDERS, and all other persons similarly situated,

Plaintiffs

vs. CIVIL ACTION NO. CV 183-93

CITICORP HOMEOWNERS, INC. and CITICORP ACCEPTANCE CO., INC.,

Defendants

MOTION TO ALLOW CONTACT WITH CLASS MEMBERS

NOW COME the plaintiffs and move that this Court issue an order allowing the attorneys for the plaintiffs to inform class members of the proposed amendment to the Depository Institutions Deregulation and Monetary Control Act of 1980 (hereinafter referred to as "DIDMCA") so as to give class members the opportunity to have input into the legislative process. In support of this motion, plaintiffs show:

1. That Citicorp Homeowners, Inc., and Citicorp Acceptance Co., Inc. (hereinafter referred to as "Citicorp"), through their trade organizations, have had an amendment to

APPENDIX I

DIDMCA drafted and submitted to the Senate Banking, Housing and Urban Affairs Committee and Financial Institutions and Consumer Affairs Subcommittee, said amendment being known as S.L.C. Draft No. 089910.415, a copy of which is attached hereto and marked Exhibit "A."

2. That on November 6, 1985, public hearings were held before the Senate Financial Institutions and Consumer Affairs Subcommittee, the Honorable Slade Gorton presiding.

3. That at said hearing, testimony was presented by representatives of Citicorp's trade organizations, the National Manufactured Housing Financial Association, the Coordinating Counsel on Manufactured Housing Finance and the American Financial Services Association. The attorneys for the class in the above captioned case were invited to testify and presented both oral and written testimony.

4. That said proposed bill seeks to retroactively amend DIDMCA and may substantially affect the rights of class members in this litigation.

5. That at said hearing, the Committee expressed concern about knowing of instances where mobile home purchasers had not been afforded those consumer protection benefits mandated by DIDMCA, § 501(c) and those consumer protection regulations set forth in 12 C.F.R. 590.4. The Committee also inquired about harm suffered by mobile home purchasers on contracts with finance charges in excess of state limits.

6. That plaintiffs believe it would assist the Senate Subcommittee which is considering this legislation proposed by Citicorp's trade organizations to know the views of mobile home purchasers and to know specific instances where Citicorp has taken "action" to repossess, accelerate and foreclose mobile home contracts without complying with DIDMCA and the consumer protection rules or to otherwise act contrary to the mandate of Congress.

7. That members of this class have a constitutional right to petition the government and seek redress of grievances. Unless they are advised of the proposed legislation they will be unable to fully exercise those rights and the inquiries of the Subcommittee will not be answered.

JOHN B. LONG
NIXON, YOW, WALLER & CAPERS
1500 Ga. Railroad Bank Bldg.
Augusta, GA 30910
(404)722-7541

DAVID E. HUDSON
HULL, TOWILL, NORMAN & BARRETT
P. O. Box 1564(13)
Augusta, GA 30913
(404)722-4483

THOMAS W. TUCKER
DYE, MILLER, TUCKER & EVERITT
P. O. Box 2426
Augusta, GA 30903
(404)722-0771

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CLERK J. Collins
SO. DIST. OF GA

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

WHILDON L. MOYER, ET AL.,)
)
Plaintiffs,)
)
vs.) CIVIL ACTION NO. CV183-93
)
CITICORP HOMEOWNERS, INC.)
and CITICORP ACCEPTANCE)
COMPANY, INC.,)
)
Defendants.)

REPLY TO "MOTION TO ALLOW CONTACT WITH CLASS MEMBERS"

STATEMENT OF THE CASE

This case presently pends on interlocutory appeal to the Eleventh Circuit Court of Appeals in Docket No. 84-8166 and on direct appeal in Docket No. 84-8727.

Oral argument of the combined cases took place in early August, 1985.

Plaintiffs, in a continuing drum beat of motions, have now filed two more. This response is to the first of them, a "Motion To Allow Contact With Class Members".

On August 27, 1984, this Court entered a comprehensive order, now on appeal, including certain injunctive features, prohibiting contact with class members, and appointing a monitor.

Plaintiffs' present motion seeks relief from the restrictions on contact with class members for the ostensible reason to engage in political activities in the United States Senate.

ARGUMENT

The motion to allow contact with class members is factually incorrect, and is irrelevant to any issue in this litigation.

As noted above, on August 27, 1984, this Court passed a comprehensive order which included, among other provisions, the appointment of a monitor: "to act on behalf of the Court to receive any reports or complaints from any member of this class concerning any telephone calls or other communications from defendants, their officers, agents, or employees, in which information is communicated to any member of this class inconsistent with or antagonistic to a thirty(30)-day notice of default and thirty (30) days in which to cure any such default."

The record shows the monitor's activities and that he has had very little to report.

Respectfully submitted

W Rhett Tanner

W. Rhett Tanner, #697700
Michael J. Templeton, #701925
John L. Watkins, #740515
Attorneys for Defendants

OF COUNSEL:
HANSELL & POST
3300 First Atlanta Tower
Atlanta, GA 30383
404/581-8000

American Financial Services Association

1101 Fourteenth St. N.W.
Washington, D.C.
20005

Robert B. Evans
President

(202) 289-0400

November 21, 1985

Honorable Slade Gorton
Chairman
Subcommittee on Financial Institutions
and Consumer Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for the opportunity to testify before your Subcommittee on the need for legislation clarifying the manufactured housing preemption of the Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA). Thank you for your willingness to hold hearings on this vital issue.

The following are responses to the questions which you forwarded on behalf of Senator Mattingly. We would appreciate your including these responses in the hearing record.

1. **Can you cite us two other examples where Congress has retroactively passed a law to eliminate civil liability for private parties under state law?**

Yes. Looking solely at matters within the jurisdiction of the Senate Banking Committee, one finds several examples in which this Committee has exercised continuing jurisdiction over statutory enactments by providing cure provisions and changing liability provisions.

In amendments to the Truth-In-Lending Act adopted by Congress in 1974 the liability provisions of that Act were amended to afford creditors a "good faith" defense, to limit creditor liability in the case of multiple disclosure failure situations, and to limit creditor liability in class actions by eliminating the minimum recovery of $100 to each class member and limiting aggregate actual damages to the lesser of $100,000 or 1% of the creditor's net worth (P.L. 93-495).

In 1976 this Committee and Congress again reviewed the liability provisions of Truth-In-Lending and increased the liability of creditors in class actions to the lesser of $500,000 or 1% of the creditor's net worth (P.L. 94-240). In both cases, the new liability provisions applied to credit transactions entered into prior to enactment of the amendments.

This Committee and Congress continued to exercise jurisdictional oversight with respect to Truth-In-Lending in 1980, when it included as Title VI of DIDMCA, a complete revision of Truth-In-Lending disclosure requirements and rewrote the civil liability section of Truth-In-Lending. Among other changes was the increase in the time period within which creditors could correct disclosure errors after discovery to 60 days from 15 days. Additionally, the liability provisions relating to assignees was amended, limiting liability to situations where the disclosure error was apparent on the face of the disclosure statement (P.L. 96-221).

The issue before the Senate Banking Commitee does not involve the elimination of civil liability that has been imposed on private parties under state law. The issue is whether the public policy purposes underlying DIDMCA relative to manufactured housing finance - the fostering of such financing and provision for consumer protection - are being thwarted by judicial decisions for which there are no precedents. It is important to note that state law becomes relevant only if there is first a determination that federal preemption does not apply. This Committee must retain jurisdiction over federal preemption in order to perfect and implement its and the Congress' statutory enactments. This is precisely what is at issue in the proposed legislation.

2. **If we provide retroactive legislation to cure the legal problems of the finance companies, would the same arguments require us to pass similar legislation for asbestos companies, for insurance companies faced with liability for environmental clean up costs, or for companies which make mistakes in tax or securities matters?**

No. This is not in any sense an effort to bail out companies whose conduct has caused economic harm or losses to consumers. The real issue here is whether companies which followed the requirements of DIDMCA, the FHLBB's implementing regulations, and the written interpretations of FHLBB's general counsel are to be subjected to an additional set of requirements imposed by after-the-fact judicial interpretations. The proposed legislation effectuates the Congressional intention of DIDMCA to make credit available by providing certainty for creditors and debtors that their contracts comply with federal law and that debtors receive all protections and benefits to which they are entitled by that law.

The proposed legislation includes a number of specific requirements which insure that the consumer protections of DIDMCA are provided the consumer. In every case, there must have been substantial compliance on the part of the creditor. The ability of the creditor to correct existing credit transactions is limited in time to 60 days after the effective date of the legislation (unless the creditor has already corrected, in which event such correction is given effect).

Such corrections, consistent with similar Truth-In-Lending provisions, must include the creditor's making whatever adjustments are necessary to insure the consumer obtains all consumer protections required by DIDMCA. In no event, however, may a creditor cure a failure to provide the notice of default and right to cure required by DIDMCA when it has wrongfully instituted a legal action to accelerate and foreclose or repossess the manufactured home.

The proposed amendments seek to clarify and perfect Congressional intent; they start from the premise that every consumer must either not have suffered economic harm or must be made whole before any deficiency may be cured. By contrast, the asbestos and environmental pollution cases suggested as examples are cases in which companies, who by their conduct have injured innocent third parties, would seek absolution from legal liability for their actions.

3. **If the finance companies are correct in their legal position, why not leave this entire matter to the courts to decide? Cases are now filed before the Supreme Court of the United States which could correct any error in the decisions of the Court of Appeals?**

The courts have - contrary to Ford Motor Credit Co. v. Milhollin, 444 U.S. 555 (1980) - disregarded the Federal Home Loan Bank Board regulations. While these cases present important federal issues, there is no assurance that the U.S. Supreme Court will grant review in either of the two currently pending petitions for certiorari. Given the court's caseload and the court's usual posture that it will review only where decisions of the circuit courts are in conflict, which is not the case here, the likelihood is that the court will not review these decisions.

The real issue here is that Congress has created a law which is subject to varying interpretations, as evidenced by the 6-5 split in the Quiller decision. Under such circumstances it would seem appropriate for Congress to clear up the confusion.

It should also be pointed out, as we did at the hearings, that this is not a problem limited to finance companies, as the counsel bringing these lawsuits would have the Committee believe. There is nothing unique about the kind of language used by the creditors in these lawsuits. Although we are not aware of any pending lawsuits against banks and savings and loan companies on these issues, their contracts all contain language relating to default, acceleration, repossession and foreclosure. The language of supposedly legally sufficient contracts, one of which is a bank located in Georgia, have been held up by these attorneys as sterling examples of proper disclosure, but a brief review of the differences in contract language reveals that these contracts would fare no better under the Quiller/Grant analysis. If indeed the rationale of the Quiller/Grant decisions is applied, these institutions will face the same potential liability as the creditors in these lawsuits.

It is simply a matter of time, as we learned during the heyday of Truth-In-Lending litigation, before such suits are filed. This Committee should act now so that history will not repeat itself.

4. **If mobile home finance companies can settle these cases by rolling back interest rates to current levels and still make a nice return, why is there a need for rescue by legislation?**

In the absence of any trial of the issues, we believe that discussion of any type of settlement is premature.

The question is premised on the belief that what is at issue in these cases are overcharges. In reality, at issue is a question of contractual disclosure. To date, we are not aware of any actual damages claimed by plaintiffs' counsel on behalf of borrowers. To assume that there is some type of liability is premature.

5. (a) At page 8, you state that the lawsuits have raised claims based on the typesize of the prepayment clause and the need for the contract to recite the 30-day notice provisions. No court has ruled against a lender on these grounds, is that correct?

No. In the case involving Citicorp Acceptance and Citicorp Homeowners, the District Court ruled that the typesize used in the contract did not comply.

Regarding the recitation of the 30-day notice provision, it is correct that the courts have not ruled against a lender. In each of the lawsuits referred to in our testimony, plaintiffs' counsel originally claimed that failure to disclose the 30-day notice in the contract itself violated DIDMCA, notwithstanding the FHLBB's written interpretation and regulations. The trial and appellate courts are unanimous in holding that DIDMCA does not require such disclosure in the contract.

(b) The courts have ruled, as I understand it, that contracts may not reserve for a lender the right to repossess without notice, the right to repossess on 20 days or 5 days notice, or the right to accelerate the entire debt without notice. If a contract has such provisions is it in compliance with Bank Board regulations and does it warrant new legislation to protect the lender?

Under the court decisions, it is unclear what contractual language a creditor may use with respect to a standard acceleration clause without violating the judicially created tests for compliance.

Faced with very similar language in different contracts, the court in one case upheld the contractual language by a vote of 8 to 3, while in a companion case, decided at the same time, the same court ruled 6 to 5 that the contract did not comply.

Under the approach adopted by the court, the inclusion of a standard acceleration clause is held to violate DIDMCA if it suggests to an unsophisticated debtor that he is not entitled to a 30-day right to cure notice under DIDMCA, notwithstanding that DIDMCA and the FHLBB regulations do not require that such notice be included in the contract.

This interpretation and expansion of the creditor's contract disclosure obligations is an extremely unfair burden to place on creditors in the absence of provisions in DIDMCA, like those in the Truth-In-Lending and Equal Credit Opportunity Acts, permitting a creditor who is in substantial compliance to cure such technical deficiencies, or a court to fashion an award based on all the circumstances. A "liquidated damage" approach, amounting in the Quiller case to a potential $92,000 on a $16,000 amount financed, hardly seems appropriate considering the minor nature of the alleged wrongdoing.

6. **Aside from contract language, if a lender in fact takes steps to repossess without notice or with less than 30-days notice, or fails to rebate unearned finance charges by the actuarial method, is the loan entitled to preemption? Wouldn't the proposed amendments provide a defense to such a lender?**

Under present law, the answer to both parts of the first question is no. DIDMCA's rate preemption is not available to a creditor who, with respect to a particular debtor, fails to provide the required 30-day notice upon default before instituting a legal action leading to acceleration, foreclosure, or repossession (unless the statutory abandonment or extreme circumstances exception applies and not more often than twice in a twelve month period). The same result ensues where there has been a failure to rebate under the actuarial method.

Under the proposed amendments the lender would be able to cure non-compliance in either case, subject to time limitations, except in the case of contracts entered into prior to the effective date of the amendments, where the creditor has instituted an action to foreclose without having given the requisite notice. In such an instance the debtor is still entitled to actual damages, including court costs, reasonable attorneys fees, and is subject to a new statutory penalty.

The only difference is that under the proposed amendment, the debtor is limited to these actual damages and would not be entitled to a windfall recovery. For example, if a creditor makes an error in computing an actuarial refund, but thereafter corrects the error within the period permitted by paying the debtor the amount necessary to provide the correct rebate, no liability for damages would exist under the amendment. This approach is consistent with the Truth-In-Lending Act and is intended to preclude a situation where an under-refund of one cent would trigger a liability under Georgia law of forfeiture of the total finance charge with the possible assessment of an additional penalty of twice the finance charge.

In no event, under either present law or the proposed amendment, is a debtor denied actual damages stemming from foreclosure or repossession arising out of a violation of the statute or regulation. In fact, the proposed amendment also allows an individual debtor to recover a penalty with a minimum of $100 and a maximum of $1,000. In the case of a class action, the total recovery may not exceed the lesser of $500 or 1% of the creditor's networth.

7. **At pages 10 and 11, you contend that lenders may leave the market as a result of the lawsuits. Do you have facts to support that?**

Yes. Congress itself recognized in 1980 that manufactured housing would not be financed (i.e., lenders would "leave the market") where state usury ceilings were too low to allow a profit. The same principle applies here: if courts remain free to interpolate new legal requirements from time to time based on their views of what disclosures an "unsophisticated debtor" is entitled to receive, then you have merely substituted an untenable legal regimen for an untenable economic regimen. Lenders can no more operate under one than the other.

Currently, the cost of funds is low enough that state laws are again economically viable. But, should the prime rate increase again, the federal preemption statute may be necessary to carry out the Congressional purpose of continuing the availability of housing credit. As it did in 1980, Congress should recognize the current deficiencies in the housing finance system and correct them.

To help put this matter in historical perspective, today's seemingly low prime rate of 9.5% is higher by a factor of six times that prime rate from 1933 to 1947, and higher by one full percentage point than in any year from 1933 through 1977, except for 1974. When interest rates peaked in 1980 and 1981 with the prime rate rising above 20% on four different occasions, manufactured housing lenders relied upon DIDMCA to do business in at least 36 states. Given the uncertainties created by the court's after-the-fact interpretations in the Georgia cases, creditors will be understandably reluctant to rely upon DIDMCA in the future if interest rates rise once again.

8. **At page 11, you state that VA and FHA forms are at risk. Would this be true for VA and FHA forms which provide 30-days notice to cure default as with conventional housing?**

Neither the FHA nor the VA regulations governing the form and content of manufactured housing contracts and their specified consumer protections require disclosure of a 30-day right to cure in the contract itself. According to the theory propounded by plaintiffs' counsel, any FHA or VA insured manufactured housing contract that otherwise fully met the applicable regulations is still not entitled to federal rate preemption unless it goes further and includes the 30-day notice of right to cure as well. Given the history of the litigation, it is by no means clear that an FHA or VA contract with the 30-day notice requirement may be used by a creditor without risk.

9. **Isn't it true that in the two cases at issue, *Doyle* and *Wood*, the lenders used something other than standard VA and FHA forms?**

No. Neither the VA nor the FHA promulgates "standard" contracts for manufactured housing lending.

Finally, in response to Senator Dodd's request, attached are copies of manufactured housing contract forms presently used by BarclaysAmerican/Financial, Inc. and General Electric Credit Corporation in Georgia. Also attached are these companys' contracts at issue in the Georgia cases.

If I can provide any additional information on this or any other point, please do not hesitate to contact me.

Sincerely,

Robert Evans

Robert B. Evans
President

(Please Print) The Terms of This Contract are on Both Sides of This Page

RETAIL INSTALLMENT CONTRACT
VEHICLE SECURITY AGREEMENT

FOR OFFICE USE ONLY	
DEALER NO.	ACCOUNT NO.

ADDRESS OF BUYER
Name ______ SOCIAL SECURITY NUMBER
Address ______
City ______ County ______ State ______ Zip Code ______
Location of Mobile Home ______ Tel. No. ______

NOTE: It is anticipated that this instrument, when fully completed and signed, will be submitted to General Electric Credit Corporation (GECC) of 570 Lexington Avenue, New York, New York 10022, at its local branch office and, if approved, that it or a security interest in it will be assigned to GECC. In either event, GECC as well as the Seller identified herein may be considered a Creditor under the Truth in Lending Act.

[illegible] used herein, "Buyer" means all persons who sign this contract as buyer or co-buyer, jointly and severally, and "Seller" means the seller named below and [illegible] holder of this contract pursuant to any assignment by the seller.

[illegible] has as of the date of this contract purchased from Seller, on a time sale basis under the terms stated herein, and received and accepted in its present condition the following described vehicle together with the furnishings, equipment, appliances and accessories included in the vehicle at the time of [illegible] (all hereinafter called "Vehicle"):

[illegible] of Vehicle: New ☐ Used ☐

	ADDITIONAL ACCESSORIES AND FURNISHINGS			
TRADE NAME ______	Item	Serial #	Item	Serial #
YEAR ______ MODEL ______				
LENGTH ______ WIDTH ______				
SERIAL NO. ______				
SERIAL NO. ______				

SECURITY INTEREST

Seller retains a purchase money security interest in the Vehicle pursuant to the Georgia Uniform Commercial Code and in all goods that are or may hereafter by operation of law become accessions to the Vehicle. This purchase money security interest secures payment and performance of Buyer's obligations under this contract, including [illegible] subsequently arising because of Buyer's failure to perform such obligations and under all amendments, renewals, extensions or refinancings thereof. Seller [illegible] also have the right, as its interest may appear, to receive any proceeds or other amounts payable under any insurance policy or policies required or purchased in connection with this sale.

If checked here ☐ payment and performance of Buyer's obligations under this contract are additionally secured by a mortgage or deed of trust on real estate owned by Buyer which is located at: ______ and which is additionally described in that mortgage or deed of trust. [illegible] If above box is checked, NOTICE OF RIGHT OF RESCISSION must be given.

Seller waives all other prejudgment liens or security interests.

PROPERTY INSURANCE

[illegible] is required to have and maintain, at Buyer's expense, insurance against physical damage to the Vehicle for the term of this contract, with a loss payable clause [illegible] lienholder as interest may appear with provision for 10 day notice of cancellation to lienholder. Minimum coverage—Broad Form Comprehensive in an amount [illegible] to the cash market value of the Vehicle and Vendor's Single Interest protection. The cost of this required insurance and any other property or liability insurance elected [illegible] Buyer, if procured through Seller, is $............ and Buyer's election to obtain such insurance through Seller is shown by the inclusion of this cost in [illegible] coverages checked and for the periods shown in Item 4A below. Additional insurance policies will be required to be purchased or furnished by Buyer at Buyer's expense if [illegible] being purchased or provided for this transaction expire or are cancelled prior to payment in full. Any property or liability insurance and the classifications and ratings [illegible] thereafter are subject to the insurer's acceptance and approval. Buyer has the right to obtain such insurance through an agent or other person of Buyer's choice [illegible] as through Seller.

*CREDIT LIFE INSURANCE OPTION: The Buyer whose signature appears in this box elects decreasing term life insurance on the life of the person designated below as the proposed insured (initial coverage in the amount of the Total of Payments hereunder or, if less, in the amount of $............, decreasing in coverage in either case in equal monthly increments over the original term of this contract). Any application for credit life insurance is subject to the insurer's acceptance and approval. Buyer understands and acknowledges that such insurance was not required as a condition of the extension of credit by the Seller and Buyer's decision to purchase such insurance was voluntarily made after the disclosure of its cost of $______ for the term shown below, in Item 4A(3).

PERSON DESIGNATED AS PROPOSED INSURED ______ AGE ______
(Person designated must be contract signer or co-signer)
Date ______ Signature of Buyer ______

1. Cash Price ______ $______
   Cash Downpayment ______ $______
   Trade-in: Year and Make ______
   Model ______ Serial No. ______
   Gross Allowance $______ Owing $______ Seller to pay off ______ Net $______
2. Total Downpayment ______ $______
3. Unpaid Balance of Cash Price (1 minus 2) ______ $______
4. Other Charges
   A. Insurance Charges (Note: Coverage expires on date shown under "Expiration Date". No coverage unless box is checked and cost is included in Total Other Charges.) Expiration Date (mo., day, year)
      (1) Property Insurance
         ☐ Broad Form Comprehensive ______ $______ ______
         ☐ Mobile Homeowners coverage ______ $______ ______
         ☐ Vendor's Single Interest Protection ______ $______ ______
      (2) Total Property Insurance ______ $______
      (3) ☐ Credit Life* ______ $______ ______
   B. Official Fees (as itemized below) ______ $______
      Certificate of Title Fee ______ $______
      Other (describe) ______ $______
   C. Additional Charges (as itemized below) ______ $______
      Sales Tax ______ $______
      License fees ______ $______
      Tags ______ $______
      Other (describe) ______ $______
   Total Other Charges (sum of A(2), (3), B and C) ______ $______
5. Unpaid Balance (3 plus 4) ______ $______
6. Points (Prepaid Finance Charge) ______ $______
7. Amount Financed (5 minus 6) ______ $______
8. FINANCE CHARGE (as itemized immediately below) ______ $______
   A. Time Price Differential ______ $______
   B. Points (Prepaid Finance Charge) ______ $______
   C. Other (describe) ______ $______
   Finance Charge begins to accrue on the date of this transaction unless a later date is inserted here ______
9. Total of Payments (7 plus 8) ______ $______
10. Deferred Payment Price (sum of 1, 4, 8) ______ $______

ANNUAL PERCENTAGE RATE ______%

Buyer agrees to pay the Total of Payments in ______ consecutive monthly installments beginning ______, 19____ (if no date specified, one month after date hereof) and continuing on the ______ day of each month thereafter. Regular Installment $______
Final Installment $______

LATE PAYMENT, DEFAULT AND DEFAULT CHARGES

In addition to the regular installment, Buyer agrees to pay as a delinquency and collection charge on each installment in default for more than 15 days, 5% of the unpaid amount of such installment, or $5, whichever is less. In the event of Buyer's default in payment when due, Seller may declare immediately due and payable any and all installments due or to become due hereunder, less the unearned portion of that part of the FINANCE CHARGE designated as Time Price Differential calculated by the Pro-Rata Method provided that Buyer shall be given notice of right to cure default before Seller is permitted to exercise that right. In the event this obligation is referred for collection to an attorney who is not a salaried employee of the Seller, Buyer agrees to pay in addition to all other sums due and owing hereunder, reasonable attorney's fees and court costs.

PREPAYMENT REBATE

Buyer may prepay in full or in part the unpaid balance at any time without penalty. Upon prepayment in full, Buyer will receive a refund of the unearned portion of that part of the FINANCE CHARGE designated as the Time Price Differential calculated according to the Actuarial Method. In the event of acceleration due to Buyer's default, a refund of the unearned portion of that part of the FINANCE CHARGE designated as the Time Price Differential will be calculated by the Pro-Rata Method. No refund of less than $1 will be made. Other portions of the FINANCE CHARGE are not subject to refund upon prepayment or acceleration.

Unless checked here ☐: LIABILITY INSURANCE FOR BODILY INJURY AND PROPERTY DAMAGE TO OTHERS IS NOT INCLUDED.

NOTICE TO THE BUYER: 1. Do not sign this contract before you read it or if it contains any blank spaces. 2. You are entitled to an exact copy of the contract you sign.

Buyer acknowledges having received a duplicate of the above disclosures before entering into this contract, and receipt of an exact, completed and executed copy of this contract at the time Buyer and Seller signed, and any other document that Buyer signed.

Seller ....(L. S.)
By ....
(Signature) (Title)
Seller's Address ....
(City) (State)
GA8102MH

Signature of Buyer ....(L. S.)
Signature of Co-Buyer ....(L. S.)
Address of Co-Buyer ....
Date ...., 19......

DUPLICATE—For Buyer

This contract prepared by Seller. CATALOG ORDER #850398 .]

ADDITIONAL TERMS AND CONDITIONS

Should Buyer fail to procure or maintain required insurance, Seller may, but shall not be obligated to, procure insurance on Buyer's behalf as immediately set out hereafter and, in such event, Buyer will immediately reimburse Seller for the cost thereof or such cost, plus interest at the highest lawful contract rate, will be added to Buyer's indebtedness hereunder. In the event Buyer initially fails to procure or provide required insurance, Seller may procure as nearly comparable coverage as is available. In the event Buyer has provided insurance which satisfies the minimum coverage requirements hereunder, but such insurance has expired, been cancelled or otherwise terminated, Seller may procure as nearly comparable coverage as is available to that insurance which has been so terminated.

Buyer agrees to pay promptly all liens and encumbrances imposed upon the Vehicle and for its use. Should Buyer fail to promptly pay any of such liens or encumbrances, Seller may do so on Buyer's behalf and in such event, Buyer will immediately reimburse Seller for the cost thereof, or such cost, plus interest, at the highest lawful contract rate, will be added to Buyer's indebtedness hereunder. Buyer agrees not to remove the Vehicle from the address designated herein unless he first notifies Seller and receives its express written consent and not to sell, encumber or abandon the Vehicle or use it for hire or illegally. Wherever placed, the Vehicle shall remain personal property and shall not become part of the freehold. Any personal property of Buyer in or attached to the Vehicle, not subject to the security interest of Seller may be held by Seller without any liability if the Vehicle is repossessed and Buyer shall be deemed to have waived any claim thereto unless written demand by certified mail is made upon Seller within 10 days after repossession.

Buyer hereby authorizes Seller to mail to Buyer any credit card, coupon book, or similar device for purposes of establishing the Buyer's identity and credit.

Buyer hereby authorizes Seller to investigate the Buyer's credit worthiness and credit capacity in connection with the establishment, maintenance and collection of Buyer's account and to furnish information concerning the Buyer and the Buyer's account to credit reporting agencies. Buyer further authorizes Seller to sell or otherwise furnish such information, including insurance information, to all others who may lawfully receive such information for their own use, sale, or such other purposes as they deem appropriate.

If Seller assigns this agreement, he shall not be assignee's agent for any purpose. Waiver of any default shall not constitute a waiver of any other default. No provision shall be modified, changed, or altered unless in writing and executed by an officer of such Seller. This contract constitutes the entire agreement between the parties and Buyer agrees that no representations, oral or implied have been made to Buyer to induce Buyer to enter into this contract other than those expressly set forth herein.

Wherever possible each provision of this agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this agreement. This agreement shall be of no effect until and unless signed by Seller and Buyer.

(See other side for Buyer's signature)

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

THE TERMS OF THIS CONTRACT ARE ON BOTH SIDES OF THIS PAGE

RETAIL INSTALLMENT CONTRACT SECURITY AGREEMENT

FOR OFFICE USE ONLY	
OFFICE NO	
DEALER NO	ACCT NO

ADDRESS OF BUYER

(Please Print) Name(s) ____ SOCIAL SECURITY NUMBER ____

Address ____

City ____ County ____ State ____ Zip Code ____

Proposed Location of Manufactured Home ____ Tel No ____

As used herein "Buyer" means all persons who sign this contract as buyer or co-buyer, jointly and severally and "Seller" means the seller named below. In consideration of the following time sale purchase Buyer promises to pay Seller the Total of Payments shown below in accordance with the payment schedule shown below. Buyer has, as of the date of this contract, purchased from Seller, on a time sale basis under the terms stated herein, and received and accepted in its present condition the following described manufactured home together with the furnishings, equipment, appliances and accessories included in the manufactured home at the time of purchase (all hereinafter called "Manufactured Home").

Description of Manufactured Home New ☐ Used ☐

	ADDITIONAL ACCESSORIES AND FURNISHINGS			
	Item	Serial #	Item	Serial #
TRADE NAME ____				
YEAR ____ MODEL ____				
LENGTH ____ WIDTH ____				
SERIAL NO ____				
SERIAL NO ____				

The Seller has made the Truth in Lending disclosures contained in this contract unless another party is identified here ____

ITEMIZATION OF AMOUNT FINANCED

1 Cash Price (including sales tax of $ ____) $ ____

Cash Downpayment $ ____

Trade In (Year Make Model ____)

Length ____ Width ____

Gross Value $ ____ Liens $ ____ (Seller to pay off)

Net Trade In Value $ ____

2 Total Downpayment $ ____

3 Unpaid Balance of Cash Price (1 minus 2) $ ____

4 Amounts paid to others on your behalf

a To Insurance Companies

(1) Property Insurance — Expiration Date

Broad Form

Comprehensive $ ____ ____

Mobile Homeowners $ ____ ____

(2) Credit Life Insurance $ ____

b To Public Officials

(1) License Fee $ ____

(2) Registration $ ____

(3) Lien Notation Fees $ ____

(4) Certificate of Title $ ____

(5) Tags $ ____

(6) Filing Fees $ ____

c To ____ (insert name and description) $ ____

d To ____ (insert name and description) $ ____

Total (a b c d) $ ____

5 Unpaid Balance (3 plus 4) $ ____

6 Prepaid Finance Charge $ ____

7 Amount Financed (5 minus 6) $ ____

INSURANCE

CREDIT LIFE INSURANCE OPTION: Credit Life Insurance is not required as a condition of the extension of credit by Seller and will not be provided unless (1) the name and age of the proposed insured are entered here

Proposed Insured ____ Age ____

and (2) Buyer's election of such insurance and its cost is shown by Buyer's initialing below

Term	Premium	Election
	$	I want Credit Life Insurance Initials ____

If Buyer has elected to obtain this insurance, it will be decreasing term life insurance on the life of the Proposed Insured (initial coverage in the amount of the Total of Payments hereunder or, if less, in the amount of $ ____), decreasing in coverage in either case in equal monthly increments over the term of the policy. Any application for credit life insurance is subject to the insurer's acceptance and approval.

PROPERTY INSURANCE: Buyer is required to have and maintain at Buyer's expense, insurance against physical damage to the Manufactured Home for the term of this contract, with a loss payable clause protecting lienholder (as interest may appear) with provision for 10 day notice of cancellation to lienholder (minimum coverage—Broad Form Comprehensive in an amount equal to the actual cash value of the Manufactured Home and including, if the Manufactured Home is to be located in a designated hazardous flood area, flood insurance coverage if required by Federal law). Buyer has the right to obtain such insurance through any person of Buyer's choice as well as through Seller. The cost of this required insurance and any other property or liability insurance elected by Buyer for the term(s) disclosed in Item 4a(1), if procured through Seller, is $ ____ Buyer's election to obtain such insurance through Seller is shown by the inclusion of this cost in Item 4a(1). Additional insurance policies will be required to be purchased or furnished by Buyer, at Buyer's expense, if policies being purchased or provided for expire or are cancelled prior to payment in full of this contract. Should Buyer fail initially to provide required insurance, Seller may, but shall not be obligated to, procure such insurance on Buyer's behalf. If Buyer has provided insurance satisfying the minimum coverage requirements hereunder but such insurance expires or is otherwise terminated, Seller may, but shall not be obligated to, procure on Buyer's behalf coverage as nearly comparable as is available to that insurance which has expired or been terminated. In either event the cost thereof plus interest at the highest lawful contract rate will be added to the Buyer's indebtedness hereunder.

ANNUAL PERCENTAGE RATE	**FINANCE CHARGE**	**Amount Financed**	**Total of Payments**	**Total Sale Price**
The cost of your credit as a yearly rate	The dollar amount the credit will cost you	(#7 above) The amount of credit provided to you or on your behalf	(fin. chge & amt. fin.) The amount you will have paid after you have made all payments as scheduled	(#2, #5 & fin. chge.) The total cost of your purchase on credit including your down payment of $ ____
____ %	$ ____	$ ____	$ ____	$ ____

Your payment schedule will be

Number of Payments	Amount of Payments	When Payments Are Due
		Monthly, beginning ____ 19 ____

Security: You are giving a security interest in

☒ the goods or property being purchased

☐ real property located at ____

Late Charge: If a payment is more than 15 days late, you will be charged 5% of the unpaid amount of such payment not to exceed $5.00

Prepayment: If you pay off early you may be entitled to a refund of part of the finance charge

Assumption: Someone buying your manufactured home may, under certain circumstances, be allowed to assume the remainder of the contract on the original terms.

See contract terms below and on reverse side for additional information about nonpayment, default, required repayment in full before the scheduled date and prepayment refunds.

UNLESS CHECKED HERE ☐: LIABILITY INSURANCE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED.

NOTICE TO THE BUYER: Do not sign this contract before you read it or if it contains blank spaces. You are entitled to an exact copy of the contract you sign.

BUYER ACKNOWLEDGES RECEIPT OF A TRUE COPY OF THIS RETAIL INSTALLMENT CONTRACT.

____ (Signature of Buyer)

____ (Signature of Co-Buyer)

____ (Address of Co-Buyer)

Date ____ 19 ____

____ Seller

By ____ (Signature) ____ (Title)

Seller's Address ____ (City) ____ (State)

GA 8404 MHFH

DUPLICATE—For Buyer

CATALOG ORDER #R50442

ADDITIONAL TERMS AND CONDITIONS

SECURITY INTEREST: Buyer hereby grants Seller a security interest in (1) the Manufactured Home and in all goods that are or may hereafter by operation of law become accessions thereto and (2) all proceeds of such property. This security interest secures payment and performance of Buyer's obligations under this contract, including any indebtedness subsequently arising because of Buyer's failure to perform such obligations and including any extensions, renewals or modifications hereof.

PREPAYMENT: **Buyer may prepay this contract in full or in part at any time without penalty.** In such event, Buyer will receive a refund of the unearned portion of the finance charge calculated by the Actuarial Method. Buyer agrees that no portion of the prepaid finance charge will be refunded.

DELINQUENCY & DEFAULT: Time is of the essence hereof. Buyer agrees to pay as a delinquency charge on each payment which is more than 15 days late, 5% of the unpaid amount of such payment, not to exceed $5.00. In the event of nonpaymen, or other default, if (1) Buyer is given written notice of default and right to cure and (2) fails to cure the default as provided therein within 30 days of its postmarked date, then Seller may thereafter accelerate Buyer's indebtedness, repossess and or foreclose. Seller does not have to give such notice more often than twice in any one year or if the Manufactured Home is abandoned. In the event of acceleration due to Buyer's default, Buyer will receive a refund credit of the unearned finance charge calculated by the Actuarial Method. No refund credit will be given for any portion of the prepaid finance charge. Any personal property of Buyer in or attached to the Manufactured Home which is not subject to Seller's security interest may be held by Seller without liability if the Manufactured Home is repossessed. Buyer shall be deemed to have waived any claim thereto unless written demand by certified mail is made upon Seller within 10 days after repossession. In the event Buyer's obligation is referred for collection to an attorney who is not a salaried employee of Seller, Buyer agrees to pay in addition to all other sums due and owing hereunder, reasonable attorney's fees and court costs.

ADDITIONAL COVENANTS: Buyer agrees: (a) not to remove the Manufactured Home from the address designated herein unless Buyer first notifies Seller and receives Seller's written consent, (b) not to sell the Manufactured Home without first obtaining Seller's written consent, (c) that the Manufactured Home shall remain personal property and not become part of the freehold, (d) not to encumber or abandon the Manufactured Home or use it for hire or illegally, (e) to maintain the Manufactured Home in good condition until such time as Buyer's obligations under this contract have been satisfied in full, and (f) to pay promptly all liens and encumbrances imposed upon the Manufactured Home and for its use. Should Buyer fail to promptly pay any such lien, or encumbrance, Seller may do so on Buyer's behalf. In such event, Buyer will immediately reimburse Seller for the cost thereof, or such cost plus interest at the highest lawful contract rate will be added to Buyer's indebtedness hereunder.

CREDIT INFORMATION: Buyer hereby authorizes Seller to investigate the Buyer's credit worthiness and credit capacity in connection with the establishment, maintenance and collection of Buyer's account and to furnish information concerning the Buyer and the Buyer's account to credit reporting agencies. Buyer further authorizes Seller to sell or otherwise furnish such information, including insurance information, to all others who may lawfully receive such information for their own use, sale, or such other purposes as they deem appropriate.

ASSIGNMENT: Seller may assign this contract to any person or entity. All rights granted to Seller under this contract will apply to any assignee of this contract. If Seller assigns this contract, Seller shall not be assignee's agent for any purpose.

WAIVER: Waiver of any default shall not constitute a waiver of any other default. No provision shall be modified, changed, or altered unless in writing and executed by an officer of the Seller. This contract constitutes the entire agreement between the parties and Buyer agrees that no representations, oral or implied, have been made to Buyer to induce Buyer to enter into this contract other than those expressly set forth herein.

GOVERNING LAW: Buyer and Seller agree that construction and interpretation of the provisions hereof will be governed by the laws of the State of Georgia.

VALIDITY: Wherever possible each provision of this contract shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this contract shall be prohibited by or be invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this contract. This contract shall be of no effect until and unless signed by Seller and Buyer.

(See other side for Buyer's signature)

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

TEXAS MANUFACTURED HOUSING ASSOCIATION

P.O. BOX 14428 • AUSTIN, TEXAS 78761

November 19, 1985

Honorable Slade Gorton
Chairman, Subcommittee on
Financial Institutions and Consumer Affairs
Room SD-534
United States Senate
Washington, D. C. 20510

Dear Senator Gorton:

This response is to your letter of November 7, 1985, in which you submitted Senator Mattingly's questions. In addition, I thank you and your staff for the opportunity to come before your Subcommittee to express my views on the critical issue of federal usury preemption.

Before responding to the specific questions, let me reiterate that I appeared before your Subcommittee on behalf of the National Manufactured Housing Finance Association (NMHFA) and the Coordinating Council on Manufactured Housing Finance (CCMHF). Although, we strongly support the draft amendments to Section 501 of the Depository Institutions Deregulation and Monetary Control Act of 1980 ("Section 501"), labeled as SLC draft .415, our primary interest concerns the separate and distinct preemptions of state usury laws provided for FHA-insured and VA-guaranteed manufactured home loans pursuant to Section 529 of the National Housing Act (12 U.S.C. Sec. 1735f-7) and Section 1828 of Title 38, United States Code, respectively.

The NMHFA and the CCMHF strongly support an amendment to SLC draft .415 to make it clear (i) that the FHA and VA preemptions survived the enactment of Section 501, and (ii) that in order for a state to reassert state control and opt out of these federal preemptions, the state legislature must declare its intent to do so with respect to such (FHA and/or VA) insured or guaranteed manufactured home loans in clear and specific statutory provisions. A copy of proposed amendments to SLC draft .415 is enclosed for your convenience; such was previously provided to

2215 EAST ANDERSON LANE • AUSTIN, TEXAS • 512/459-1221

the staff. These amendments will assure that SLC draft .415, when passed, removes the cloud of uncertainty with respect to proper interest rates for FHA-insured and VA-guaranteed manufactured home loans, since the various usury preemption statutes were first amended.

My responses to the specific questions submitted by Senator Mattingly follow.

Q. 1. Can you cite us two other examples where Congress has retroactively passed a law to eliminate civil liability for private parties under state law?

A. 1. The question and the answer are not relevant to the issue. We are seeking amendments to clarify the original intent of the Congress -- not to retroactively modify the substance of any one of the three preemptions. Specifically, with reference to the FHA and VA preemption statutes we are respectfully requesting -- urging -- a clarifying restatement of Congressional intent. This is not unprecedented. For example, in the case of FHA v. Darlington, Inc., 358 U.S. 84 (1958), the Supreme Court recognized that a congressional statement of the intent of a prior Congress in enacting a provision of the National Housing Act was entitled to great weight.

Q. 2. If we provide retroactive legislation to cure the legal problems of the finance companies, would the same arguments require us to pass similar legislation for asbestos companies, for insurance companies faced with liability for environmental clean up costs, or for companies which make mistakes in tax or securities matters?

A. 2. Certainly not! The types of situations included in the question are not analogous to the issue at hand; they do not involve questions of Congressional intent.

We ask only that the cloud of uncertainty be lifted as to those situations where no harm or only diminimus damage might have occurred. For example, was it the intent of Congress for a lender (providing the mortgage financing for an affordable manufactured home) to be punished by two times the total finance charge, perhaps as much as $70,000, for a clerical mistake in sending a 20-day notice of default rather than a 30-day notice -- or for inadvertently, mistakenly charging a $5 late charge after 10 days rather than 15 days? Was it the intent of Congress in 1980 and 1981 that such clerical errors or mistakes should invalidate the usury preemption? We simply ask for the right to cure these mistakes when there has been substantial compliance with DIDMCA Section 501 by payment of actual damages, if any.

Q. 3. If the finance companies are correct in their legal position, why not leave this entire matter to the courts to decide? Cases are now filed before the Supreme Court of the United States which could correct any error in the decisions of the Court of Appeals.

A. 3. We all know of numerous instances in which the courts have misconstrued legislative intent. The NMHFA and CCMHF, upon whose behalf I respond, do not ask that the Congress validate the legal position of the finance companies; we ask only that the Congress clarify its intent. Also, there is no certainty that the Supreme Court will agree to hear the Quiller and Grant cases -- much less the Doyle and Wood cases which involve the questions relating to FHA-insured and VA-guaranteed manufactured housing mortgage loans. Even if the Supreme Court ultimately hears these cases, the decision may well be very narrow in scope and leave the ultimate question of Congressional intent unanswered.

Thus, we submit that the Congress should act now to make its intent clear in order that the Court may consider such in any final decision.

Q. 4. If mobile home finance companies can settle these cases by rolling back interest rates to current levels and still make a nice return, why is there a need for rescue by legislation?

A. 4. With respect to FHA and VA mortgage loans, "rolling back" the interest rates is not a simple matter. Virtually all of these loans are pooled into Government National Mortgage Association (GNMA) mortgage-backed securities which are sold to investors through Wall Street capital markets. The lenders then become what are called GNMA issuer/servicers. They have no beneficial ownership interest in the loans nor have any right to retain the interest payments. Their sole interest is a contract right to service the loans and to receive a fixed servicing fee calculated on the outstanding principal balance of the loan. These GNMA issuers receive the same servicing fee regardless of whether the interest rate on the loan is eighteen, ten, or eight percent. You cannot "roll back" the investor who purchased the mortgage-backed GNMA security; the loan would have to be bought out of the pool.

We submit that this was an important reason why the Congress treated FHA-insured and VA-guaranteed mortgage loans separately in the two preemptive measures in 1980. Conventional manufactured housing mortgage loans (which are not eligible for GNMA mortgage-backed securities pools) were then separately treated in DIDMCA Section 501 in March, 1981.

With respect to loans involved in the Georgia litigation, it is our understanding that at least in some of the cases, the lenders have offered to "roll back" the interest rates or to rewrite the loan contracts and pay an appropriate cash sum to cover actual legal costs. Apparently, plaintiffs' counsel wanted substantially more than actual legal costs, and thus, the offers were rejected.

Q. 5. At page 25, of your February 1980 testimony, you stated that loans or sales which did not incorporate the "appropriate purchaser protections" would not qualify for preemption. In light of that why do you now label such loans which courts have found to be contrary to the "purchaser protections" as hypertechnical and worthy of new legislation?

A. 5. To judge a lender guilty of usury and subject it to massive punitive damages solely because of clerical mistakes or inadvertent use of the wrong form of notice is "hypertechnical" -- and we submit was not the intent of the Congress in requiring the substantive consumer protections in Section 501. We believe the intent was to protect the consumer, actually and in fact, not to place "form" ahead of "substance".

The manufactured housing industry supported the consumer protection features of Section 501 for conventional mortgage loans as my 1980 testimony stated. We still support the Section 501 consumer protections since these loans are not regulated pursuant to the stringent regulations of FHA or VA. Lenders have been complying to the best of their ability to interpret the law. What has become evident from the litigation is that there are ambiguities in the law and regulations as to precisely what is required of a lender. These ambiguities need to be cleared up. We know of no instance where a lender intentionally violated the law in order to accelerate the loan. Lenders do not want defaults and repossessions; they too lose. Clarifying legislation is needed to avoid punishing those who acted in good faith in the past, and to give unequivocal and unambiguous guidance for the future.

Q. 6. (a) In speaking to VA/FHA mobile homes sales, is it your position that they should not have the more extensive consumer protections of DIDMCA sec. 501?

(b) Do you also contend that Congress in passing DIDMCA sec. 501 intended to leave VA/FHA loans/sales with less consumer protection than conventional mobile home sales? VA/FHA regulations were less protective, were they not?

A. 6.(a) and (b). My response includes several points. First, I do not agree that Section 501 offers more extensive or greater protections to the consumer than do the FHA or VA manufactured home loan programs. A superficial look at only one or two provisions, such as the late charge and cure period provisions, could mistakenly lead one to conclude otherwise; however, a complete analysis of FHA, VA, and Section 501 consumer protection features will certainly demonstrate that the FHA and VA consumer/borrower is far better protected.

Second, any lender can take advantage of Section 501 -- this was one reason for requiring consumer protections. However, before a lender can originate an FHA loan, it must go through a detailed application and review process to become an FHA approved mortgagee. The lender must submit resumes, must have a certain minimum net worth, and must submit detailed information on how the company will make and service loans. These procedures are reviewed by FHA upon the lender's application, and also during periodic field audits of the lender by FHA staff. Furthermore, when an insurance claim is submitted for payment, FHA reviews the entire file, including servicing records and evidence of compliance with all applicable state laws. FHA will not pay a claim if it discovers that the lender has not complied with applicable state consumer protections. In a sense, FHA and VA act as the borrowers's advocate, making sure that the lender has complied with both applicable state law as well as the FHA or VA regulations. This type of complete, overall consumer protection is not required by Section 501.

Third, Congress expressly authorized the FHA and VA programs, and delegated the authority to regulate those programs to protect the consumer to the appropriate administrators. These administrators regulate the program and supervise the lenders using the programs. If, for whatever reason, the Congress was displeased with the manner in which the delegated authority was being exercised, the Congress would undoubtedly have taken legislative action in connection with the 1980 passage of the FHA and VA usury preemptions which included manufactured housing. No such action was taken.

Fourth, as I stated in my testimony before your Subcommittee, the Congress was sufficiently satisfied with the consumer protections found in the FHA and VA programs that it expressly recommended such to the Federal Home Loan Bank Board for use in preparing Section 501 consumer protection regulations.

Q. 7. (a) In your 1980 testimony you advocated manufactured housing being treated by law and in the market as much as possible like conventional housing. Yet in 1980-83 loans have left these purchasers with 17-20% loans for 15 years. Are they also able to refinance at lower rates with your members as would a conventional home borrower?

(b) Should we enact legislation to require your members to refinance at lower rates?

A. 7.(a). For part of the answer, please refer to my response to question 4, above. FHA, VA, and Section 501, all prohibit prepayment penalties and all require the payoff to be calculated on the "actuarial" basis. Thus, assuming continued good credit and income qualification, the manufactured home owner can certainly secure a new loan at lower interest rates today and pay off the high-interest mortgage -- just like a conventional (site-built) home borrower. However, no mortgage lender is required by law or regulation to reduce the rate on any existing home loan -- whether for manufactured or for site-built housing.

7.(b). Wide fluctuations in interest rates are not beneficial to home purchasers, whether manufactured or site-built, nor to mortgage lenders. High interest rates frequently do not result in greater profits for the lenders, particularly when the mortgage loans are sold in the secondary market through GNMA pools or the various FNMA and FHLMC secondary market programs. This is true for mortgage lenders financing both site-built as well as manufactured housing. Thus, in the vast majority of cases, legislation requiring any lender to refinance existing mortgage loans would be confiscatory.

Would such legislation require refinancing at higher rates when interest rates go up? Would it apply to site-built residential home loans as well as manufactured home mortgage loans?

Q.8. You state at page 11 of your current testimony that loans like those in the Doyle and Wood cases were never intended to comply with DIDMCA sec. 501. Why does the Southern Guaranty form then twice recite that provisions in it are subject to the Bank Board regulations at 12 CFR sec. 590.4?

A. 8. Naturally, only Southern Guaranty would be able to answer this question without some equivocation. The answer might well be very simple -- the wrong form was inadvertently used -- but without any actual damage to the consumer.

Also, many lenders seek to reduce loan form printing costs and to facilitate administration by using one single loan form for FHA, VA, and conventional loans. Typically these forms contain check boxes to mark off which alternative provisions apply for a particular type of transaction. The typical real estate contract used in many parts of the country similarly is designed for use with FHA, VA, or conventional financing. To use such a form is not to acknowledge the need to comply with every alternative provision referenced in the contract.

It just doesn't make sense to argue that Southern Guaranty believed that it had to comply with Section 501 when making an FHA-insured mortgage loan, when FHA had been advising FHA-approved manufactured home lenders that they did not have to comply with Section 501 because of the separate FHA preemption.

In addition to Senator Mattingly's questions, Senator Dodd requested sample contracts before and after determination of the cases.

Again, thank you for testifying. If your responses are received by November 20, 1985, they can be published in the record of the hearing.

Sincerely,

Slade

Slade Gorton
Chairman, Subcommittee on
Financial Institutions and
Consumer Affairs

Note: As to Senator Dodd's request for sample contracts, we are trying to secure appropriate copies and hope to provide them to your staff very soon.

In conclusion, thank you again for the opportunity to present the views of the National Manufactured Housing Finance Association and the Coordinating Council on Manufactured Housing Finance. Your undivided attention to the oral testimony and pertinent and relevant questions to the panel demonstrated your sincere desire to secure sufficient information to make the best decision possible in the public interest. If I, or my Washington counsel, can be of further assistance or can answer any further questions, please let us know.

Very sincerely,

Will Ehrle

Will Ehrle
President & General Counsel

WE:df
enclosure

Statement of the Chamber of Commerce of the United States

ON: UNITED STATES MIXED CREDIT (TIED AID) PROGRAM

TO: SUBCOMMITTEE ON INTERNATIONAL FINANCE AND MONETARY POLICY OF THE SENATE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

BY: MICHAEL A. SAMUELS

DATE: NOVEMBER 6, 1985

The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

The Chamber of Commerce of the United States is the world's largest federation of business companies and associations and is the principal spokesman for the American business community. It represents more than 184,000 companies plus several thousand other organizations, such as local/state chambers of commerce and trade/professional associations.

More than 92 percent of the Chamber's members are small business firms with fewer than 100 employees, 53 percent with fewer than 10 employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

Besides representing a cross section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business--manufacturing, retailing, services, construction, wholesaling, and finance--numbers more than 14,000 members. Yet no one group constitutes as much as 29 percent of the total membership. Further, the Chamber has substantial membership in all 50 states.

The Chamber's international reach is substantial as well. It believes that global interdependence provides an opportunity, not a threat. In addition to the 53 American Chambers of Commerce Abroad, an increasing number of members are engaged in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on national issues are developed by a cross section of its members serving on committees, subcommittees and task forces. Currently, some 1,800 business people participate in this process.

STATEMENT
on
UNITED STATES MIXED CREDIT (TIED AID) PROGRAM
for submission to the
SUBCOMMITTEE ON INTERNATIONAL FINANCE AND MONETARY POLICY
of the
SENATE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
for the
CHAMBER OF COMMERCE OF THE UNITED STATES
by
Michael A. Samuels*
November 6, 1985

The Chamber of Commerce of the United States welcomes the opportunity to comment on the issue of mixed credits. The Chamber has long been active in the development of an effective U. S. mixed credit program and commends the Subcommittee on International Finance and Monetary Policy for holding hearings on this issue.

The escalating U. S. trade deficit is a significant indicator of the strong pressure on U. S. producers to meet the intense competition for world markets. Yet, in the effort to reverse their declining global market share, American exporters must not only contend with the high value of the dollar but also with the determination of foreign governments to use both fair and unfair means to help their export sectors win business.

American exporters are willing and able to compete on commercial terms for foreign markets, but they cannot compete against the resources of foreign governments. They must, therefore, seek their own government's help in pursuing negotiations to eliminate mixed credits and other forms of predatory export financing; meanwhile, until negotiations are successful, they also must seek their government's export financing assistance. Lost export markets mean lost U. S.-based production and jobs, which are difficult, if not impossible, to regain.

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* Vice President, International Division, Chamber of Commerce of the United States.

For several years, the Chamber of Commerce has advocated a strong U. S. mixed credit program for the following reasons:

- To defend U. S. exporters against foreign mixed credit activity, which is costing them business they would have won if the transaction had been conducted on a purely commercial basis.

- To provide U. S. negotiators with bargaining power in the ongoing efforts to eliminate the practice through international agreement.

The mixed credit bills now pending before the Congress contain many features, some of which are excellent and some of which are deficient.

As we understand it, the following measures are being considered by the Congress:

- S. 1763 (Heinz, R-PA) and H. R. 3515 (Wylie, R-OH), the Senate and House versions, respectively, of the Administration's "war chest" proposal.

- H. R. 1857 (Lundine, D-NY), the Export Promotion and Fair Credit Act of 1985.

- H. R. 3296 (Johnson, R-CT), the Competitive American Export Finance Act.

The Chamber urges the Congress to adopt a meaningful mixed credit program before the end of this session, and we strongly recommend that such legislation include the following:

- Separate Funding

  Specific and separate funds should be appropriated for the U. S. mixed credit programs, similar to the approach in the Johnson bill, which provides for $250 million each for the Export-Import bank of the U. S. (Eximbank) and the U. S. Agency for International Development (USAID) for Fiscal Year 1987. USAID already has been allocated $50 million for both Fiscal Years 1986 and 1987 in Economic Support Funds (ESF). The Eximbank program must not be funded from its direct credit authority, which is already at minimal levels.

- Retaining and Strengthening Existing Eximbank and USAID Mixed Credit Program

  Mixed credits are by definition a mix of foreign aid and commercial export credits, which requires Eximbank and USAID to take a leading role in combating foreign mixed credits. These two agencies have an impressive record of effectiveness and experience in working with U. S. exporters.

- Involvement of All Trade-Related Agencies in U. S. Mixed Credit Program

  The control and direction of the U. S. mixed credit program should involve all agencies presently involved in U. S. trade policy. These agencies have expertise bearing on one or more aspects of individual mixed credit transactions, and this expertise must be used without adding an excessive bureaucracy. The National Advisory Council (NAC) arrangement should be retained as the basis for the inter-agency control while project decisions should be determined by a simple majority vote.

- Maintaining U. S. Mixed Credit Program Until International Agreement Secured

  An aggressive U. S. mixed credit program should be retained until it has reached its objective--the elimination of all mixed credit activity according to international agreement. A two-year sunset provision would defeat this objective. One practical approach would invest the NAC with the responsibility of certifying when the negotiations have succeeded in ending mixed credit abuse.

- Timely and Responsive Action

  The shortest possible deadlines should be followed in responding to an exporter's request for a mixed credit. Ten working days for a preliminary commitment and 30 working days for a final commitment, as provided in the Johnson bill, would be effective limits.

- Retaining and Strengthening the Matching Functions in U. S. Mixed Credit Program

  A special effort to target export opportunities, to anticipate and preempt foreign offers, would be a welcome feature of the U. S. mixed credit program. This should not, however, be at the expense of matching functions: American exporters need support against foreign offers on a day-to-day basis.

The Chamber believes that the Johnson bill (H. R. 3296) provides a comprehensive vehicle for accomplishing these objectives. Most importantly, it responds to the imperative need for stronger and more flexible responses in support of U. S. exporters in day-to-day competition with foreign mixed credit offers; the proposed Administration "war chest" bill (H. R. 3515) would be a valuable supplement to the matching program; but in its present form, the bill contains provisions which would conflict with or violate the objectives cited above.

More specifically, H. R. 3515 and S. 1763 raise concerns on the following points:

- The "war chest" would eliminate the existing matching program of

Eximbank and USAID: the "war chest" should supplement these programs, not simply replace them.

- The "war chest" proposal is too limited in its targeting approach: U. S. exporters need support in their day-to-day competition as provided in the matching program.

- The "war chest" has a two-year sunset provision, which severely restricts the program's flexibility in responding to foreign market developments.

- The program would be placed under the sole control of the Treasury Department, as opposed to meaningful participation by all trade-related agencies, as noted above.

In summary:

1. The Johnson bill (H. R. 3296) provides the basis for a truly strengthened U. S. mixed credit program that responds to the everyday needs of American exporters, while also providing our negotiators with enhanced bargaining power.

2. The "war chest" legislative proposal (H. R. 3515 & S. 1763), as presently drafted, ignores the President's mandate for export promotion by focusing too narrowly on targeting functions. By eliminating present Eximbank and USAID programs, it would leave U. S. exporters grievously unprotected against day-to-day foreign mixed credit competition.

The Chamber urges the Congress to act now to provide American exporters with the form of effective mixed credit support that is already available to their foreign competitors.

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FIFTH FLOOR
ATLANTA, GEORGIA 30346-2283

1667 K STREET, N.W.
SUITE 500
WASHINGTON, D.C. 20006-1692

November 20, 1985

The Honorable Slade Gorton
Chairman
Financial Institutions & Consumer Affairs
Subcommittee of the
Banking, Housing & Urban Affairs Committee
Dirksen Senate Office Building
Washington, D.C. 20510

Re: S.L.C. Draft No. 089910.415

Dear Senator Gorton:

This letter is written in connection with certain statements made in prepared text submitted on November 6, 1985 to your Committee in connection with the above by the lawyers who represent the plaintiffs in certain cases pending in court against Citicorp Acceptance Co., Inc. and Citicorp Homeowners, Inc. (collectively referred to herein as "Citicorp"). These cases are Whildon L. Moyer, et al v. Citicorp Homeowners, Inc. and Citicorp Acceptance Company, Inc., et al, Civil Action No. CV183-93, in the United States District Court for the Southern District of Georgia, Augusta Division, and in Docket Nos.84-8166 and 84-8727, in the Eleventh Circuit Court of Appeals; and Lillard T. Crow, et al v. Citicorp Acceptance Co., Inc., a Delaware Corporation, and Citicorp Person to Person Financial Center, Inc., a North Carolina Corporation, in the North Carolina Court of Appeals, Tenth District Case No. 8510SC969. The undersigned is the attorney for Citicorp. in the Moyer case.

While there are certain misleading or inaccurate statements about that litigation in the plaintiffs' lawyers' submission to the Committee, Citicorp believes the proper place to litigate the issues in these cases is in the courts in which they are pending, and will continue to vigorously protect its interests in those forums.

Yours very truly,

W. Rhett Tanner

W. Rhett Tanner

Attorney for Citicorp Acceptance
Co., Inc. and Citicorp
Homeowners, Inc.